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Plant Closing: Advance Notice and Rapid Response

Special Report

CONGRESS OF THE UNITED STATES
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Foreword

In February 1986 OTA released *Technology and Structural Unemployment: Reemploying Displaced Adults*, an assessment of the causes and outlook for worker displacement, the performance of programs to serve displaced adults, and options to improve service. One finding of the assessment was that an early start is a key element in helping displaced workers find or train for new jobs. An important policy question related to this finding is whether advance notice of major layoffs or plant closings ought to be required by law.

As a followup to the study of worker displacement, Representatives William Clay, Silvio Conte, and William Ford asked OTA to hold a workshop on advance notice of plant closings and permanent layoffs. Senator Orrin Hatch endorsed the request. The General Accounting Office cosponsored the workshop. This special report, drawn from the workshop and research by OTA and GAO, assesses the benefits and costs of advance notice and examines issues in the debate over mandatory advance notice.

There is widespread agreement that it is beneficial to employers, employees and the community for companies to give advance notice of plant closings or permanent mass layoffs. Advance notice allows time to get programs of worker assistance ready by the day layoffs begin, when demands for help in finding new jobs are at a peak. Also, employers who give their displaced workers advance notice and help in finding a new job are likely to keep the loyalty of workers who stay, and to enhance the company's standing in the community.

Although many agree that advance notice is beneficial, the average worker receives little notice, and there is no consensus on whether it ought to be required by law. In general, business representatives oppose mandatory advance notice, arguing that it would be too rigid to take differing circumstances into account, and could cause problems with creditors, customers, and key employees. Proponents argue that an advance notice law could include exceptions to provide flexibility.

The report also assesses the ability of public agencies to provide worker adjustment services rapidly and effectively when employers do give notice. Much of the benefit of advance notice depends on the prompt provision of effective services. The ability to respond rapidly is not well developed in the United States. One reason is that the major program for assistance to displaced workers is new (Title III of the Job Training Partnership Act); officials responsible for the program are still experimenting and learning. Despite disagreements on whether advance notice should be required, business, labor, and community leaders do agree on the need to improve responses to plant closings.

The viewpoints of people in business, State and local government, academia, and labor unions were sought in conducting this study. OTA thanks the many people who provided data and advice—workshop members, government officials, reviewers, and consultants—for their assistance. As with all OTA studies, the analyses and findings of this report are solely those of OTA.

John H. Gibbons

JOHN H. GIBBONS
Director

Plant Closings: Advance Notice and Rapid Response Workshop Members

Edward J. Bocik
Allied-Signal Inc.

Edward Chiera
Alameda County Training and Employment Board, California

Ronald K. Cupp
The Stroh Brewery Co.

Steven Deutsch
University of Oregon

Peter S. DiCicco
International Union of Electronics, Electrical, Technical, Salaried and Machine Workers

Sheldon Friedman, United Automobile, Aerospace and Agricultural Implement Workers of America

Evelyn Ganzglass
National Governors' Association

Earl A. Goodman
Employment and Immigration Canada, Ontario Region

Joan A. Hammond
Ohio Bureau of Employment Services

Harry P. Hancock, Jr.
The Singer Co.

Patricia Hanratty
Industrial Services Program, Massachusetts

Pierre Leclerc
Employment and Immigration Canada

Kenneth McLennan
Committee for Economic Development

Lawrence Mishel
Industrial Union Department, AFL-CIO

Dennis Rocheleau
General Electric Co.

Herbert J. Sanchez
Varco International, Inc.

Philip Shapira
University of California, Berkeley

John T. Smith
United Steelworkers of America

J. Robert White
New Jersey Division of Employment Services

NOTE: The workshop members provided advice and comment on the special report, but the members do not necessarily approve, disapprove, or endorse the report for which OTA assumes full responsiblity.

OTA Project Staff—Plant Closing: Advance Notice and Rapid Response

Lionel S. Johns, Assistant Director, *OTA*
Energy, Materials, and International Security Division

Audrey Buyrn,
Industry, Technology, and Employment Program Manager

Julie Fox Gorte, *Project Director*

Katherine Gillman, *Senior Analyst*

W. Wendell Fletcher, *Senior Analyst*

Edna M. Thompson, *Administrative Assistant*

Joyce A. Wills, *Secretary*

Individual Contractors

Kevin Balfe

Ruth Fedrau

Irene Gordon

David Sheridan

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Boise Cascade Corp.
Champion International Corp.
Robert Cook, Westat
Michael Eisenscher, Labor Consultant
Gretchen E. Erhardt, National Center on Occupational Readjustment, Inc.
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Gerald Holmes, U.S. Department of Labor, Bureau of International Labor Affairs
Industrial Adjustment Service, Employment and Immigration Canada
Intel Corp.
Andrew Johnson, Electronics Association of California
Judith K. Larsen, Cognos Associates
Anne Talcott Lawrence, University of California, Berkeley
Mark Levinson, United Automobile, Aerospace and Agricultural Implement Workers of America
Paul Lovejoy, Maine Bureau of Labor Standards
National Semiconductor Corp.
Rica Pirani, California Employment Development Department
Michael Podgursky, University of Massachusetts, Amherst
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William J. Gainer
Associate Director

Sigurd Nilsen
Senior Economist

Robert T. Rogers
Senior Evaluator

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SUMMARY AND CONCLUSIONS

Plant closings and permanent mass layoffs are a continuing feature of the American economy. Changing conditions of competition and a rapidly growing field of competitors mean that while some companies will be created, flourish, and expand, others will go out of business or cut back production, or install labor-saving technologies, and workers will be displaced. These adjustments go on during all parts of the business cycle, during recovery and economic growth as well as recession. In the expansion years of 1983 and 1984, over a million workers in larger establishments (more than 100 employees) lost their jobs due to business closure or permanent mass layoff, according to preliminary results from a recent nationwide survey done by the General Accounting Office. It is likely that at least as many were similarly affected in smaller establishments.

The GAO survey found that 88 percent of larger establishments provide some kind of notice to at least some of their displaced workers, but many people get little or no specific warning that *their* jobs will be lost. For example, 30 percent of employers give no individual advance notice to blue-collar workers, and another 34 percent give 2 weeks or less. In general, the amount of notice individuals receive is short. White-collar workers get an average of 2 weeks' notice and blue-collar workers 7 days; blue-collar workers in unionized establishments are given an average of 2 weeks' notice, compared with 2 days in non-unionized establishments. Notice periods this brief do not allow enough time to prepare an effective program of adjustment assistance for the displaced workers. The GAO survey is the first work done by statistically valid methods that provides national information on the extent of advance notice given to workers who lose their jobs in plant closings and permanent mass layoffs.[1]

In the discussion that follows, the term "advance notice" is used to mean all cases of prior notice of job loss, whether voluntarily provided by employers, encouraged by government programs, or required by law.[2] Wherever required notice is meant, it is so identified. A great deal of controversy surrounds the issue of *requiring* advance notice by law, but there is wide agreement on the benefits of notice itself (aside from the question of a legal obligation). The conviction that advance notice is an important element in helping displaced workers find or train for new jobs is not unanimous, but it is broadly held by representatives of business, labor, communities, and public agencies.

One of the most important benefits of advance notice is that it allows companies, labor, and government agencies time to plan and develop adjustment assistance. The peak demand for help in finding or training for new jobs is immediately after job loss. It takes about 2 to 4 months' work in advance (depending on the number of workers involved) to prepare a comprehensive adjustment program, including testing and assessment, counseling, job search skills training, job development, vocational skills training, and remedial education. It is sometimes possible to put together a partial but worthwhile emergency program, including the key element of connection with workers, in a shorter time—even a couple of weeks. However, with the shorter preparation time many services, such as vocational skills training and job development, will not be ready when the project opens. Moreover, many conditions must be met to achieve a fast response. Among the contributing factors are a company with a strong commitment to serving its displaced workers and the resources to provide funds up front, partnership with a supportive union or worker representatives, expert private consultants, and a high degree of cooperation from public agencies. Some experience in developing and operating displaced worker projects, on the part both of the company and labor, is often a key element as well.

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[1] The GAO survey was of employers, not workers. For the most part, it provides information on the number of establishments providing advance notice and services to laid-off workers, not on the number of workers receiving notice or services. Results of the GAO survey cited throughout this report are from a preliminary analysis. GAO's final analysis will be completed in fall 1986; no major changes in results are expected.

[2] Legislation to require employers to provide advance notice of plant closings or mass layoffs has been proposed in every Congress since 1973, but no law requiring notice has been enacted. A few States require or encourage advance notice. See the section entitled "Advance Notice Programs and Proposals in the United States" for details.

Another benefit of advance notice is that displaced workers are much more likely to participate in projects that begin before job loss; it is difficult even to let workers know that help is available after they are out of work and out of touch. Moreover, some of the best adjustment programs are run jointly by management and labor, and it is much harder to get their participation after a plant is closed.

Advance notice benefits people, whether or not they are offered or take advantage of adjustment services. Notice gives workers a chance to develop their own job-hunting or training options, or to adjust financial or other family plans. Advance notice can also benefit companies. According to some business spokesmen, the way their companies treat employees who are being let go is important to the morale and loyalty of remaining workers, and to the company's reputation in the community.

It is sometimes argued that advance notice can be instrumental in keeping plants open that would otherwise close. Several critical elements are needed in efforts to save a failing plant; some of the key questions are these: 1) Are there realistic prospects for profitability? 2) Are both management and labor willing to make sacrifices to create a more efficient plant? 3) Is there enough time? There are some instances where advance notice, combined with assistance from government agencies, communities, and workers has helped to avoid a closure; however, this seems to happen infrequently. Advance notice of a few months is rarely enough time to turn an ailing business around. And decisions of large companies to close down branches for strategic reasons are not usually amenable to change. Advance *planning*, however, can often lessen the impacts on workers when a company is cutting its work force due to technological change. Some companies have used a combination of strategies—such as offering early retirement, transferring workers to other plants owned by the company, using surplus workers for vacation replacements, allowing job sharing, and attrition—to avoid involuntary layoffs even while reducing the work force by as much as one-third in a few years.

The broad, though not unanimous, agreement on the benefits of advance notice does not extend to legal requirements for notice. Disagreement is intense over whether the Federal or State governments ought to place legal obligations on companies to provide notice. Opponents of mandated advance notice argue that the costs of providing notice are substantial, and that a good adjustment program is much more important than notice per se.

One of the objections to mandated advance notice is the need for flexibility. Every plant is different, it is argued; even with escape clauses for unforeseeable circumstances, compulsory notice requirements might be too rigid, burdensome, or costly. There is also widespread concern that advance notice requirements would be hardest on small businesses. Many small firms cannot anticipate the need for work force reductions much in advance; and once the need is clear, it is often difficult for a business with limited cash and credit to carry unneeded employees on the payroll. Small business can be exempted from advance notice requirements, but there is little agreement over where to draw the line defining small business.

Another argument is that advance notice could worsen the conditions that led to the notice, and make a firm's decline inevitable. According to this view, notice that a firm intends to lay off workers or close gives signals to customers and creditors that the firm is in trouble; loss of customers and increased creditor pressure could hasten or guarantee the closure or layoff. While these are credible arguments against mandated advance notice, it is difficult to find actual occurrences of customer or creditor desertion following notice.[3] One company spokesman said that loss of customers is "no problem" for businesses that make commodity products, but could be for a producer of specialty products. The same person also said that advance notice of a plant shutdown had not affected his own company's access to credit, but that his company would consider limiting credit to other companies that announced a shutdown or curtailment. Although these are not examples of actual loss of customers or creditors, they underscore the potential for such problems. It should also be noted that, while loss of credit is a potential problem for firms, advance notice can benefit creditors and customers.

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[3] Since notice is not required in most of the United States, it is difficult to find instances of loss of credit or customers following notice. Businesses may be unlikely to give notice voluntarily if they anticipate such costs.

A drawback to advance notice that some companies have reported is the loss of key employees needed for an orderly closure or layoff. However, many companies do not provide severance pay to workers who leave before the closing date (though they make exceptions for individuals). Some pay severance to everyone but offer stay-on bonuses to key workers. These measures, while often successful, add costs. Another argument sometimes made against advance notice is that worker morale will be lowered and production and quality will suffer. However, most people with practical experience, including business spokesmen, report that productivity, quality, and even safety records have all improved during the period of notice.

Finally, some opponents of mandatory advance notice legislation may object not because notice itself is overly burdensome or costly, but because one requirement might open the door to other, more expensive obligations related to plant closings and mass layoffs. Other obligations might include consultation with labor about alternatives to the intended closings or layoffs, or the required provision of certain benefits such as severance pay or employer-provided health insurance coverage. Extensive obligations to the work force in the event of a closing or permanent layoff may make employers reluctant to hire new workers. It is often argued that such obligations have hindered job creation in Western Europe in recent years; many European countries have requirements that go far beyond advance notice.

OTA found that American forest products companies operating in Canada, where there are few company obligations regarding group dismissals except advance notice, readily accepted the Canadian laws and customs. One company, located in Ontario, mentioned no difficulty in complying with a Provincial law requiring notice; two companies operating in British Columbia, where advance notice is not required but seems to be customary for large companies, provide advance notice. The parent companies operating in the United States differ markedly. All three strongly oppose mandated advance notice; one provides notice as a matter of company policy but the other two do not favor advance notice even as a voluntary company policy.

While many of the arguments made by opponents of mandatory advance notice are credible, it is more difficult to find evidence of the costs than evidence of the benefits. Moreover, some of the costs may be confined to special cases, while the benefits apply more widely. Much of the benefit of advance notice depends, however, on a prompt, effective response.

According to the GAO survey, a substantial fraction of larger establishments offer some kind of severance benefits to at least some of their employees who lose jobs in plant closings and layoffs. Employer-provided help in finding a new job is less common. Establishments are more likely to offer some kind of assistance to white-collar than to blue-collar workers.[4] Slightly more than half of the larger establishments offer severance pay to displaced white-collar workers; about one-third provide it to blue-collar workers. Approximately one-third of the establishments offer placement help to white-collar workers; one-fifth provide it to blue-collar workers.

Typically, companies that offer placement assistance commit staff, space, and funds to the job-finding efforts. However, few take on the whole burden of adjustment assistance, much less provide it before or at the time of layoff, when help is most in demand. Usually, government support—both technical and financial—is needed to mount a comprehensive adjustment project.

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[4] According to the Bureau of Labor Statistics 1984 survey of displaced workers, more blue-collar workers than white-collar workers were displaced in the 5 years 1979 to 1983, and typically had greater problems finding reemployment.

The Job Training Partnership Act (JTPA) Title III, a program intended to help organize and pay for services to displaced worker programs, allows States and local service providers to begin displaced worker programs before layoffs, as soon as notice is given. Despite the consensus that the sooner displaced workers can get help the better, delays of 3 months or more in getting JTPA assistance and funding are apparently common. Delays are longest in receiving funds granted at the discretion of the Secretary of Labor. State officials report that it takes 4 or 5 months at the least to get a proposal through the decisionmaking steps (at local, State, and Federal levels) for a Federal discretionary grant.

Although systematic, nationwide information is lacking, the available evidence indicates that very few States are able to provide an effective rapid response when plant closings or mass layoffs are announced. Moreover, acquaintance with the JTPA Title III program and the possibilities it offers for publicly funded assistance to displaced workers seems to be very limited in the business community. In general, it appears that relatively few displaced workers get help from JTPA programs. OTA has estimated that about 1 out of 20 eligible workers are being served.

Most States are aware of their difficulties in mounting a rapid, effective response to plant closings and major layoffs; some have established rapid response teams, and others are taking steps to do so. None so far has a system comparable to the Canadian Industrial Adjustment Service, which is able to move quickly, effectively, and inexpensively in helping to set up labor-management adjustment committees in plants that are closing.[5] The Department of Labor and the National Governors' Association are planning demonstration projects based on the Canadian model in cooperation with half a dozen States over the next year or so. However, the general problem still remains that neither funds nor technical assistance for displaced worker projects are reliably and readily available when needed. Unless a good rapid response system is in place, some of the prime benefits of advance notice—whether it is voluntary, mandatory, partial, or universal—will not be captured.

Positions in the debate over legally required advance notice have changed little in more than a decade. In general, business spokesmen and industry groups oppose mandatory Federal notice legislation, while labor representatives favor it. There are areas of agreement in the debate, however. There is a broad consensus that advance notice is a humane thing to do, and that notice facilitates effective displaced worker programs. Business groups and spokesmen generally think that advance notice is overemphasized, however, and that prompt delivery of adjustment assistance is more important. Labor representatives continue to support advance notice legislation and argue that good adjustment programs depend on advance notice; but they agree that rapid, effective responses should be developed, funded, and emphasized.

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[5] Three-quarters of the Canadian work force is covered by Provincial or federal laws requiring advance notice.

INTRODUCTION

Loss of a job through permanent mass layoff or business closure is a fact of life for many American workers. Between January 1979 and January 1984, 11.5 million American workers were displaced because of plant shutdowns and relocations, rising productivity, or shrinking output.[6] In the 2 years 1983 and 1984, over a million workers lost their jobs due to business closure or permanent mass layoff in establishments with more than 100 employees, according to preliminary results from a recent nationwide survey done by the General Accounting Office.[7] It is likely that at least as many more were similarly affected in smaller establishments. The GAO survey showed that manufacturing workers were harder hit than workers in service industries, and that the midwestern and northeastern regions had disproportionate shares of closings and mass layoffs. The survey also showed that large numbers of workers lose their jobs in business closures and permanent mass layoffs even in a period of economic growth and recovery, such as 1983-84, as well as during recessions. Dealing with the consequence—worker displacement—is therefore an ongoing task.

The consequences of involuntary job loss are both painful and long lasting for many displaced workers. Displaced workers are likely to experience prolonged unemployment: one-fourth of all workers displaced between January 1979 and January 1984 were without work for a year or more during the period.[8] Most displaced workers do return to work, but the majority take a cut in earnings, either through lower wages or acceptance of part-time employment in place of a full-time job. Many drop out of the labor force, sometimes after many weeks of discouraging job hunting. Most displaced workers lose benefits; health benefits usually stop with the loss of a job or shortly thereafter, pension benefits suffer, and seniority is usually wiped out.[9] The economic stresses of displacement also take a toll in mental and physical health. Effective adjustment assistance, helping displaced workers to find or train for new jobs, helps to minimize the costs of displacement.

Advance notice of plant closings and permanent mass layoffs is generally regarded as a valuable tool facilitating worker adjustment. Although advance notice is required in many industrialized nations, the U.S. Government has no such requirements.[10] For over a decade, bills have been introduced in Congress which would mandate advance notice. While none of these bills has been passed, advance notice remains a legislative issue. In late 1985, Representatives Silvio Conte, William Clay, and William Ford[11] asked the Office of Technology Assessment to hold a workshop exploring the benefits and costs of advance notice. Senator Orrin Hatch endorsed the request. The requestors asked OTA to examine a number of issues connected with advance notice, including the following:

- How many workers receive advance notice, and what is the extent of notice?
- What are the costs that advance notice requirements would impose on business? Do such costs vary by industry? Are there ways to mitigate such costs?
- Is advance notice effective in triggering efforts to prevent closings and mass layoffs?

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[6] Paul O. Flaim and Ellen Sehgal, "Displaced Workers of 1979-83: How Well Have They Fared?" *Monthly Labor Review*, June 1985.

[7] U.S. Congress, General Accounting Office, "GAO's Preliminary Analysis of U.S. Business Closures and Permanent Layoffs During 1983 and 1984," paper for presentation at the OTA-GAO Workshop on Plant Closings, Apr. 30-May 1, 1986.

[8] Descriptions of the consequences of displacement are taken from Flaim and Sehgal, op. cit.; and from U.S. Congress, Office of Technology Assessment, *Technology and Structural Unemployment: Reemploying Displaced Adults*, OTA-ITE-250 (Washington, DC: U.S. Government Printing Office, February 1986).

[9] In some cases, when displaced workers are transferred to another plant owned by the same company where the layoff occurred, the workers take their seniority rights with them. Often in transfers of this kind, seniority for benefits is retained, but not for order of layoff. Relocation to another company-owned plant is quite infrequent for blue-collar workers.

[10] Two States and a few local governments require advance notice. See the section entitled "State and Local Programs."

[11] Cosponsors of H.R. 1616, a bill requiring 90 days' advance notice of plant closings and mass layoffs. H.R. 1616 was narrowly defeated by the House of Representatives in November 1985. See the section entitled "Legislative Proposals" for a description of H.R. 1616.

- How rapidly can services be delivered to workers following notice of plant closings or mass layoffs? In particular, what is the capacity of public sector programs, such as those established under the Job Training Partnership Act Title III, to respond rapidly with adjustment services?
- To what extent do workers in the so-called "sunrise" industries, or high-tech firms, receive advance notice? What services do workers in such industries typically get?
- What is the experience of U.S.-based businesses with Canadian notice requirements? To what extent is the Canadian system applicable in the United States?
- What other countries require advance notice? How do American businesses cope with such requirements when they operate in those countries?

A workshop was held April 30 and May 1, 1986. The report that follows is based partly on the discussions that took place at the workshop, and also on pertinent literature and research conducted by the Office of Technology Assessment and the General Accounting Office, which cosponsored the workshop. This report focuses quite specifically on the issues of advance notice of and rapid response to plant closings and permanent mass layoffs. OTA previously conducted a much broader assessment of worker displacement, publishing the results in the February 1986 report, *Technology and Structural Unemployment: Reemploying Displaced Adults*. In the earlier report, OTA considered the causes of worker displacement, the effects of displacement on workers and communities, the effectiveness of adjustment programs in helping displaced workers find or train for new jobs, and some of the continuing, long-range efforts needed to avoid displacement—including efforts to improve adult education and training, or to adopt new forms of work organization that are appropriate and effective with advanced computer-based technologies. In addition, in its continuing studies of competitiveness of various U.S. industries, OTA considers effects on jobs and workers as important parts of the assessments.

How Much Notice?

There is broad—though not unanimous—agreement that early action is an important part of assisting displaced workers. Advance notice of plant closings or permanent mass layoffs greatly facilitates an early start. Employers responding to a Conference Board survey noted that "advance notice is beneficial to employees and is an essential element in a plant-closure program."[12] GAO's recent survey found that 88 percent of larger establishments provide some kind of notice to at least some of their displaced workers, but many people get little or no specific warning that *their* jobs will be lost.[13] Thirty percent of employers give no specific notice to individual blue-collar workers that their jobs will be lost, and another 34 percent give 2 weeks or less. The amount of notice that most workers get is 1 to 2 weeks—too little time to provide much in the way of adjustment services to workers by the time layoffs begin.

The GAO survey is a source of new information on how many U.S. employers give notice of plant closings and mass layoffs and how much notice is given. The survey covered the experience of larger establishments (100 or more employees) in 1983 and 1984[14]; establishments of this size account for about 44 percent of the U.S. work force. Preliminary results of the GAO survey indicate that the amount of advance notice provided varies a great deal. Twelve percent of establishments reported they gave no notice of any kind to any employees of possible closure or permanent layoff; 30 percent gave at least some of their workers 1 to 14 days' notice; 40 percent gave 14 to 90 days' notice; and 18 percent gave more than 90 days' notice (table 1).

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[12] Ronald E. Berenbeim, *Company Programs To Ease the Impact of Shutdowns*, Conference Board Report No. 878 (New York: The Conference Board, 1986).

[13] U.S. Congress, General Accounting Office, op. cit.

[14] The method GAO used in its survey was to select a stratified random sample of 2,400 establishments which appeared, on the basis of Dun & Bradstreet data, to have experienced either a closure or a permanent layoff involving 200 or more employees or, in the case of establishments with fewer than 1,000 employees, 20 percent of the work force. GAO reached by telephone representatives of 90 percent of the 2,400 firms, and identified about 500 that had experienced a closure or a layoff which met the criteria. GAO then distributed a questionnaire to these 500 firms on the amount of advance notice and assistance offered to the workers involved in the closures and layoffs. Preliminary results of the survey cited here are based on a 70 percent response.

These figures represent what GAO called "overall" notice, including either general notice—announcements intended to provide workers and communities with some warning without specifying the exact closure date or which workers are to be laid off—or specific notice—which informs individual workers when their jobs will end—or both. General notice can be quite useful in letting workers and communities know that they may be facing job losses, and may be effective in catalyzing adjustment efforts or planning for worker adjustment services. In the case of a plant or business closure, general notice and specific notice often amount to the same thing. However, when mass layoffs but *not* closings are involved, specific notice may be needed before adjustment service delivery can begin; few workers are likely to sign up for services until they know that their jobs will be affected.

Of the two types of notice, general notice was longer than specific notice. Of the establishments surveyed, 18 percent provided more than 3 months' general notice of closing or mass layoff to at least some of their employees; only 9 percent provided more than 3 months' specific notice. Over half (54 percent) of establishments provided 2 weeks' or *less* specific notice; 55 percent of establishments provided 2 weeks' or *more* general notice. It appears that the typical establishment with over 100 workers announces that job losses will occur more than 2 weeks before the occurrence, but gives specific notice to individual workers about 1 week in advance to blue-collar workers and 2 weeks in advance to white-collar workers.

The GAO figures are consistent in some ways but dissimilar in others to figures in a recent Conference Board report.[15] The Conference Board, like GAO, reported that about 12 percent of firms gave no advance notice of closure, with some advance notice apparently the norm for larger establishments and firms. However, The Conference Board survey reported substantially longer periods of notice given than did the GAO survey (table 2). Why the difference?

The inconsistencies probably reflect differences in the ways the surveys were conducted and what was asked. GAO's figures are based on a 70 percent response rate; firms that did not at first reply were contacted repeatedly. (GAO's final analysis was not complete at the time of this report; a final response rate near 80 percent is expected.) Also, the firms questioned in the GAO survey were from a strati-

Table 1.—Percent of Establishments Providing Various Lengths of Advance Notice

Days	Percentage of establishments		
	General	Specific	Overall
0	20	23	12
1-14	25	31	30
15-30	19	20	21
31-90	~~18~~	17	19
91-180	10	6	9
181 or more	8	3	9

NOTE: The "Overall" category includes all establishments which gave at least some workers the designated amount of notice. Establishments are included in the category which designates the maximum notice to any workers. For example, if an establishment gave 7 days' specific notice and 30 days' general notice, it is included in the "15-30 days" category.

SOURCE: U.S. Congress, General Accounting Office, "GAO's Preliminary Analysis of U.S. Business Closures and Permanent Layoffs During 1983 and 1984," paper for presentation at the OTA-GAO workshop on plant closings, Apr. 30-May 1, 1986.

Table 2.—Amount of Advance Notice Given: Comparison of GAO and Conference Board Figures

Days	Percentage of establishments or companies	
	GAO	Conference Board
0	12	13
1-90	70	41
91-180	9	21
181 or more	9	25

NOTE: GAO survey figures are for overall notice, including both general and specific notice. This category designates the maximum amount of general *or* specific notice establishments give (see explanation of table 1).

SOURCE: U.S. Congress, General Accounting Office, "GAO's Preliminary Analysis of U.S. Business Closures and Permanent Layoffs During 1983 and 1984," paper for presentation at the OTA-GAO workshop on plant closings, Apr. 30-May 1, 1986; and Ronald E. Berenbeim, *Company Programs to Ease the Impact of Shutdowns* (New York: The Conference Board, 1986).

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[15] Berenbeim, op. cit., p. 9.

fied random sample. Thus, GAO's results are derived from a statistically valid representation of U.S. establishments with 100 or more employees that had plant closings or mass layoffs in the 2 years 1983 and 1984.

The Conference Board figures are based on a 27 percent response to a questionnaire that was mailed to human-resource vice presidents of 1,900 U.S. companies; one followup letter was sent to those that did not reply to the first. The companies selected were the largest (in terms of sales of services or goods) in seven categories of industry: large manufacturing, banking, insurance, retail trade, gas and electric utilities, diversified services, and transportation; the selection was not planned to match the distribution of these kinds of industries in the U.S. economy. Of the 512 companies responding to the questionnaire, 224 reported that they had had at least one closure. Major differences from the GAO survey were the lower response rate (indicating greater self-selection) and the fact that the original sample was not selected to represent U.S. businesses generally. In addition, many of the 224 companies had experienced more than one closing. According to the report's author, the more experience with closing the more notice and service a company is likely to give.[16] The Conference Board figures thus probably represent best practice of large firms,[17] rather than typical practice.

Comprehensive figures derived by statistically valid methods on who gets advance notice and how much notice is given are available only for establishments with 100 or more employees, through the GAO survey. Some good case examples of managing shutdowns are presented in The Conference Board report as well. There is little information, however, on advance notice practices in smaller firms. It is likely that small businesses give less advance notice of layoffs or shutdowns. Small businesses may have a harder time anticipating layoffs and very limited resources to manage work force reductions.

Who Gets Notice?

Employers generally give white-collar workers more notice of impending job losses than blue-collar workers; on average, white-collar workers receive 14 days' specific notice of job loss in plant closings or mass layoffs, while blue-collar workers get 7 days' specific notice.[18] Thirty percent of establishments reported they gave no specific notice to blue-collar workers; 26 percent gave none to white-collar workers. Sixty-five percent gave blue-collar workers 2 weeks' or less specific notice, versus 53 percent giving 2 weeks or less to white-collar workers (table 3).

Unions make a difference in the amount of notice workers get. Eighty-four percent of establishments with union workers gave blue-collar workers some amount of general notice; 71 percent of establishments with no union workers gave general notice. Unionized establishments typically gave longer notice; blue-collar workers in establishments with unions got an average of 2 weeks' specific notice, while those in establishments without unions got an average of 2 days' specific notice.

Case Study: Silicon Valley

Information on advance notice by industry is usually not available. For industries with

Table 3.—Amount of Advance Notice Establishments Give, By Type of Worker

	Percentage of establishments		
Days	White collar	Blue collar	Overall
0	26	30	23
1-14	28	34	31
15-30	19	16	20
31-90	17	13	17
91-180	7	5	6
181 or more	3	2	3

NOTE: Establishments are included in the "overall" category according to the maximum amount of notice given to any workers. For example, if an establishment gives 7 days' notice to one group of workers and 30 days' notice to another, it is included in the category "15-30 days" in the "Overall" column.

SOURCE: U.S. Congress, General Accounting Office, "GAO's Preliminary Analysis of U.S. Business Closures and Permanent Layoffs During 1983 and 1984," paper for presentation at the OTA-GAO workshop on plant closings, Apr. 30-May 1, 1986.

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[16] Personal communication with Ronald Berenbeim, The Conference Board, June 1986.

[17] Respondents to The Conference Board survey were mostly medium-size to large companies; 83 percent had more than 1,000 employees.

[18] This section is drawn from the GAO study; see U.S. Congress, General Accounting Office, op. cit.

large or industrywide unions, collective bargaining contracts are an indicator of how much notice is given. Union membership is declining, however, and now represents less than 20 percent of the work force. One of the purposes of the workshop was to find out more about how growing industrial and service sectors—most of which are not heavily unionized—handle mass layoffs and closings. To provide some information, OTA did a small case study on worker displacement in California's Santa Clara County, a center of the computer and semiconductor industries.

Up until the mid-1980s, both industries experienced rapid employment growth. Between 1977 and 1984, U.S. semiconductor industry employment increased by slightly more than 9 percent per year, while computer industry employment rose even faster, at nearly 10 percent per year. Since early 1985, however, both industries have faced difficulties stemming from import competition and leveling or falling demand. Employment in both industries has declined. In the semiconductor industry, employment in June 1986 was at mid-1984 levels, having fallen by about 21,000 since its peak in January 1985. In the computer industry, employment had fallen by over 50,000 since the 1985 peak.

Falling employment has meant widespread layoffs in the high-tech industries of Silicon Valley. However, layoffs are associated not only with employment decline; between 1979 and 1984, when California's high-tech industries added 322,000 jobs, layoffs in high-tech industries numbered 177,000.[19] According to Philip Shapira, who has made a study of displacement and industrial restructuring in California, workers from high-tech industries "experienced a significantly longer median period of unemployment than basic industry workers." Part of the reason, according to Shapira, is that high-tech workers are less likely to have received advance notice of layoffs than basic industry workers. Shapira's analysis of the Bureau of Labor Statistics' data shows that 54 percent of California's displaced workers "received advance notice or expected layoff" (the survey question was phrased in this way). But only 45 percent of California's high-tech workers received advance notice or expected to be laid off.

Shapira's findings for California high-tech workers are in line with the findings of the case study of advance notice and adjustment services in Santa Clara County commissioned by OTA. Interviews with workers, company spokesmen, employment experts, and industry experts in California found that laid-off workers in Silicon Valley typically get little or no advance notice, a small amount of severance pay (about 2 weeks), and minimal or no help in finding a new job.[20] In part, this may reflect the fact that many high-tech firms in Silicon Valley are relatively small, with limited ability to anticipate future conditions or to withstand even short business downturns without cutting costs. Andrew Johnson, of the Electronics Association of California, cites the example of a company that makes machines in which semiconductor chips are baked. The firm, with annual revenues of about $20 million and 160 to 170 employees, competes with at least three similar small companies and several much larger companies. One of its machines costs $950,000. "When a couple of the company's customers back off from previously stated intentions to buy one of these machines or actually cancels an order, it makes a substantial impact on the company's financial status. The company's ability to predict accurately, say, six months ahead of time how many employees it will need is not very good."[21]

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[19] These figures come from an analysis of a Bureau of Labor Statistics survey of worker displacement over the period from January 1979 to January 1984. These data, along with additional information on plant closings and layoffs in the State of California, were analyzed by Philip Shapira, a doctoral candidate at the University of California, Berkeley. The high-tech industries analyzed included a number of sectors besides the computer and semiconductor industries, which accounted for 30 percent of California's high-tech employment in 1984. See Philip Shapira, "Industry and Jobs in Transition: A Study of Industrial Restructuring and Worker Displacement in California," unpublished draft doctoral dissertation, Department of City and Regional Planning, University of California, Berkeley, 1986.

[20] David Sheridan, "Worker Displacement in the California High-Tech Industry: A Report to the Office of Technology Assessment," contractor report prepared for the Office of Technology Assessment, May 1986. A case study of job security in Massachusetts high-tech industries had similar findings. Of 23 firms studied, there was "no evidence of any firm giving more than one day notice to affected employees." See The High Tech Research Group, "Whatever Happened to Job Security? The 1985 Slow Down in the Massachusetts High Tech Industry," January 1986.

Small firms may indeed have special difficulties anticipating cutbacks. However, thousands of the layoffs in Silicon Valley occurred in medium-size and larger firms, and many of these firms also laid people off without notice. In 1983, the Atari computer and video games subsidiary of Warner Communications terminated nearly 600 employees with no prior warning. According to newspaper accounts, the workers were called off their jobs, informed that they were no longer needed, and immediately escorted out of the plant by security guards.[22] Intel, a company with 21,500 employees in 1984, laid off 2,000 employees in 1985 and 1986, and gave no notice. Intel did provide employees with severance pay and opened a placement center to help its laid-off workers find jobs. Several other large or medium-sized high-tech companies also dismissed workers without advance notice in 1986.[23]

Another likely reason for limited or no notice in Silicon Valley is that almost none of the high-tech firms there are unionized, and establishments with unions are more likely to give advance notice than those without.

While the general picture in Silicon Valley is of workers receiving little or no advance notice, there are important exceptions.[24] Apple Computer, Inc., decided that it had to close down three of its less-automated microcomputer plants during the personal computer glut in early 1985. The 750 permanent employees who worked at these three plants—one in Mill Street, Ireland, one in Garden Grove, California, and one in Dallas, Texas—received 2 to 3 months' advance notice of their layoffs, and help from what turned out to be an exceptionally successful outplacement center.[25] These cuts, however, were not enough; Apple was in deeper trouble than initially thought. A few months later, Apple laid off an additional 450 permanent employees throughout the company, most of whom received 2 weeks' advance notice. All of them, however, even those just hired, received at least 6 weeks' severance pay, and were given first crack at jobs when Apple began hiring again.

Notably, some Silicon Valley companies were able to survive the downturn without layoffs. Advanced Micro Devices, Inc. (AMD), like other semiconductor firms, showed net losses in quarterly reports during the downturn, and sales dropped 50 percent between December 1984 and December 1985. AMD had a company policy of no layoffs, handed down by its CEO Jerry Sanders, who had been fired by another high-tech company years before. AMD avoided layoffs by cutting executive and professional salaries 10 to 15 percent, deferring all pay increases, and freezing hiring. AMD did shed about 1,000 workers through attrition, but nobody was laid off involuntarily throughout 1985.[26]

Another way Silicon Valley companies avoid layoffs is through the employment of part-time and temporary workers. The use of temporary employees is an increasingly prominent feature of Santa Clara County's high-tech industries. Nationwide, 1 of every 165 workers is a temporary; in Silicon Valley the ratio is 1 in 60, and the number is growing. According to an official in the San Jose office of California's Employment Development Department, the use of temporaries is "one of the most striking trends in the Silicon Valley work force since 1980."[27] The temporary agencies fill all kinds of jobs, from software designer to quality control inspector to word processor or assembler.

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[21] Sheridan, op. cit., pp. 26-27.

[22] Daniel A. Beucke, "The Ax Falls in Silicon Valley," *San Jose Mercury*, Mar. 28, 1983; "Atari Ex-Employees Sue, Charging Firm Concealed Layoff Plan," *Wall Street Journal*, Aug. 16, 1983; Tamar Lewin, "Workers' Rights in a Closing Tested," *New York Times*, July 19, 1984. In the Atari case, an out-of-court settlement was subsequently reached in 1986 in which 535 workers laid off without notice each received $1,119 from the company. The payment represented the average salary of the workers for 4 weeks.

[23] See for example Carrie Dolan, "High-Tech Concern's Sudden Fall Leaves Small Town With Problems and Questions," *Wall Street Journal*, Feb. 22, 1984; Mary A. C. Fallon and Ray Alvereztorres, "Out of Work—Overnight: In this Valley, Pink Slips Often Come With No Notice," *San Jose Mercury*, June 16, 1986; Karen Southwick, "The Rush To Push Fired Workers Out the Door," *San Francisco Chronicle*, June 16, 1986; see the section entitled "Response to Advance Notice" for discussion of employer-provided services to displaced workers.

[24] The following examples are from Sheridan, op. cit.

[25] Some 1,500 temporary employees who were also let go received no notice or severance benefits. See the following discussion of temporary employees in Silicon Valley.

[26] In August 1986, after continued financial losses, Advanced Micro Devices announced the dismissal of 200 employees with less than 1 year on the job—the company's first dismissals in a decade. At the same time, AMD rescinded its no-layoff policy for employees with more than 1 year of service. See Brenton R. Schendler, "Semiconductor Indicator Fell Again in July," *Wall Street Journal*, Aug. 13, 1986.

To employers, the advantages of temporary workers are that they can be quickly hired and fired, without advance notice or severance benefits; they often do not get other costly benefits; and they can provide a buffer for companies that want stable employment policies for their regular employees. The disadvantages of having too many temporaries are that they can hardly develop a sense of company pride or camaraderie, and any training they get is lost when they leave. From the employees' point of view, freelance work can be highly rewarding if one has skills that are in demand—in software design, for example. For workers in the much more numerous, less skilled jobs—such as assembling circuit boards, stocking shelves, or cleaning out chemical tanks—intermittent jobs and pay can make for a precarious existence. The San Jose *Mercury News* calls these temporaries "migrant electronic workers."[28]

At least one company (Intel) is creating a "flexible work force program," in an effort to overcome the drawbacks of employing temporaries. The flexible workers must agree that they can be called on to work as much as 40 hours a week or as little as none. It is expected that they will average 20 to 25 hours a week, and they will receive partial benefits. The company anticipates that most of these jobs will be filled by women who do not want to work full time because they have children at home.

Company practices in Silicon Valley are diverse, but there is something of an industry norm. Although some companies provide advance notice; most provide little or none. Some companies provide worker adjustment and outplacement services, but most workers do not receive such services, either from their companies or from government programs.

Companies that provide notice and services generally do so because advance notice is seen as good for business and community goodwill. According to The Conference Board:

> Company managers responsible for closure believe that advance notice, combined with generous severance plans, reduces pressure and anxiety, generates good will, and contributes to improved productivity.[29]

Jay Elliott, Apple's Vice President for Human Resources, puts it this way:

> Talent is a strategic consideration in the electronics business. People aren't interchangeable parts like in the old smokestack industries where machines were basically more important than people. We don't go out, hire someone, hand him a lug-wrench, and tell him to screw bolts all day. You have to value people and their input . . . Frankly, when we laid people off last year, we were as concerned about the impact on the people who weren't laid off as much as on those who were. If you don't treat the people who are being laid off with dignity—share the responsibility for finding another good job—then it sends a message to the employees still with you that they are expendable.[30]

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[27] Interview with Rica Pirani, San Jose office, California Employment Development Department, Apr. 28, 1986, reported in Sheridan, op. cit.

[28] Sheridan, op. cit.

[29] Berenbeim, op. cit., pp. 7-8.

[30] Sheridan, op. cit., p. 11.

COSTS AND BENEFITS OF ADVANCE NOTICE

> . . . advance notice of major employee displacement to the workers, the union, and the appropriate government and community agencies is a procedural prerequisite for constructive action.[31]
>
> —George P. Shultz and Arnold R. Weber, 1966

Twenty years later, the Shultz and Weber prescription is still widely—though not universally—accepted. Early warning of plant closings and major layoffs gives companies, labor groups, and government agencies time to organize assistance for displaced workers, and it gives the workers time to think about their options and adjust their plans. Advance notice alone, however, is not enough; it needs to be tied to prompt effective action to help displaced workers find or train for adequate jobs. It is a "prerequisite for constructive action," not the constructive action itself.

Despite broad agreement that advance notice is desirable, people strongly disagree on whether governments ought to require it. With very few exceptions, American businesses oppose any government requirements for advance notice, including ones that allow pay in lieu of notice or grant exceptions for unforeseeable business circumstances. The general objection to a legal requirement is that every case of a plant closing or major layoff is different, and a mandated minimum notice period would not take this diversity into account. Also, some argue that emphasis on advance notice is misplaced, because a company's commitment to its displaced workers, and effective programs to help them, are more important. Labor union representatives argue, on the other hand, that while advance notice alone is not sufficient, it is necessary, and should be required. Many labor spokesmen favor broader obligations on employers, including consultation with workers on whether the layoffs might be avoided and, if the layoffs do take place, extension of benefits such as health insurance.

The discussion that follows considers the benefits of advance notice apart from the issue of *mandated* notice. The benefits to affected workers would be similar whether notice were provided as a result of legal requirements, government encouragement or incentives, collective bargaining with unions, or voluntary action by employers; and there is widespread agreement on the nature of the benefits. No inference should be drawn that the benefits described here depend on mandated notice, or that there is agreement on mandated notice.

It is more difficult conceptually to consider costs of advance notice apart from the issue of a legal requirement, since most of the costs fall on employers, and if employers voluntarily provide notice it may be presumed that they have found that the benefits to them outweigh their costs. Some costs can be examined in the context both of voluntary employer action and of a legal mandate, but much of the section on costs assumes that notice would be legally required. There is less agreement on the nature of the costs of advance notice than of the benefits; for the description of costs OTA has relied mostly on the arguments of business spokesmen and, insofar as information was available, on business experience. Also, the discussion focuses mainly on the costs of advance notice to business and the benefits to individual workers, even though other parties are sometimes affected too. For example, customers and creditors of a firm which is planning to close may benefit from advance warning of the closure while the firm itself might suffer.

OTA's analysis of costs and benefits of advance notice is based as much as possible on experience, not hypothetical cases. It is drawn from the GAO survey of plant closings and major layoffs in establishments with more than 100 employees; the OTA-GAO workshop on plant closings and further discussion with participants; a report to OTA from, and discussions with, consultants who have helped a number of large companies plan and set up displaced worker services; discussions with officials of Canada's Industrial Adjustment Service (IAS), which has more than 20 years experience in helping set up labor-management adjustment committees to serve workers displaced in plant closings and mass layoffs[32]; and OTA case studies of firms in the U.S. and Canadian forest products industries and of high-tech firms in California's Silicon Valley. Much of the material is anecdotal, and does not represent every kind of company in every kind of business situation. In particular, it proved difficult to collect first-hand information from small companies with experience in plant closings and large layoffs; one reason is that small companies which have had these experiences often go out of business. There is considerable variety in the cases studied, however; interviews were conducted in firms of various sizes and industries, in firms that do provide advance notice and firms that do not, and in firms that provide various kinds and levels of services to displaced workers.

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[31] George Shultz and Arnold R. Weber, *Strategies for the Displaced Worker* (Westport, CT: Greenwood Press, 1966), p. 190.

Benefits, and Relation to Worker Adjustment Programs

The best time to start a project for displaced workers is before a plant closes or mass layoffs begin; advance notice makes early action possible—although it does not guarantee it. Some of the advantages of early warning are: 1) it is easier to enroll workers in adjustment programs before they are laid off; 2) it is easier to enlist managers and workers as active participants in displaced worker projects before the closing or layoff; 3) with time to plan ahead, services to workers can be ready at the time of layoff, or before; and 4) with enough lead time, it is sometimes possible to avoid layoffs altogether. Knowing in advance about a coming layoff is obviously of some value to individual workers too, even if they do not get help from an organized project. They have the opportunity to adjust financial plans and get a head start on job hunting. In addition, many company managers see advance notice as a benefit to the company itself, by improving relations with the remaining workers, enhancing the company's reputation in the community, and conforming with company values of fair and ethical treatment of its employees.

Worker Participation

Displaced workers are more likely to take part in adjustment projects that begin before a plant closing or major layoff.[33] Not only is it far simpler to find and communicate with workers before they are out of work and out of touch; the period between the announcement and closing is also critical to gaining the workers' trust—to assuring that someone will be there to help after they are laid off, and that the services will be worthwhile. The most effective displaced worker projects offer a broad range of services, including job search instruction, job development and placement assistance, testing and assessment as needed, vocational and educational counseling, personal counseling (especially financial and consumer credit counseling), vocational skills training, on-the-job training, and remedial education.[34] In the period between announcement and layoff, workers can readily find out what the project will offer through orientation sessions, bulletin board announcements, union newsletters, and personal counseling.

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[32] See U.S. Congress, Office of Technology Assessment, op. cit., pp. 220-222 for a brief description of the Canadian IAS—how it works, what it costs, and what it achieves.

[33] The Downriver Community Conference, for example, found that if services are available before the plant closes, 50 percent of the workers take advantage of them; up to a year after closing, 35 percent sign up, and after 2 years, 17 percent participate. See Kathleen Alessandro and W. Robert Schneiders, "Case Study —Retraining Workers Displaced From the Automotive Industry Into Robotic Technicians," paper presented to the Society of Manufacturing Engineers (Dearborn, MI: Society of Manufacturing Engineers, 1984). The Philadephia Area Labor-Management Committee reports that when job search workshops are given before layoffs, 70 to 80 percent of the workers participate; afterwards, the participation rate drops off to less than 20 percent. See James Martin and Anthony Wigglesworth, "Labor-Management Cooperation at Kelsey-Hayes Leads to Help for Laid-Off Workers," a Labor-Management Cooperation Brief, U.S. Department of Labor, Bureau of Labor-Management Relations and Cooperative Programs, May 1985.

[34] For a description and analysis of displaced worker projects, see U.S. Congress, Office of Technology Assessment, op. cit., ch. 6.

While displaced worker projects have been started more than a year after the plant closing, and have given valuable services to workers, participation in these circumstances is low. For example, a well-planned, high-quality project was created under a union-management agreement in Midland, Pennsylvania, nearly a year after 4,300 workers were displaced in a steel plant closing. With an energetic outreach campaign, which included knocking on doors to acquaint people with the program and making follow-up telephone calls to those who did not enroll, the project eventually served about 1,250 displaced workers over a period of nearly 3 years. Considering the late start, the Midland project's participation rate of 29 percent is unusually high; it reflects the extra efforts put into outreach and the general excellence of the project's services. By contrast, however, over 250 workers showed up at an orientation session held in a Vincennes, Indiana, battery plant after notice was given that the plant would be closed. At the time, 192 people were still working in the plant, and 146 former workers were also invited to take part. Of the 338 eligible displaced workers, 186 (55 percent) enrolled in the project; three-quarters were placed within a year, despite a local unemployment rate of 11.6 percent.

Officials of Canada's IAS also report difficulties with enrollment after the plant closes. "You have to get a copy of the payroll just to find the people," said one. "It's so much work, so hard to get people to come—they have to come at their own expense, maybe hire a baby sitter, and they're skeptical that they'll get anything out of the program." In a small community where everyone knows everyone else, it may be worth the effort to try to reach and enroll displaced workers, but in a big city the chances of success are usually slim.

The question may be asked whether people who do not enroll actually need services; do they simply find jobs on their own as time passes? Certainly, many do. But the evidence is that, on average, displaced workers who take part in adjustment projects get jobs sooner, stay employed more steadily, and earn more than they would without such help.[35] People with long experience in providing services to displaced blue-collar workers estimate that about one-third of those laid off could probably fare quite well on their own.[36] The other two-thirds are likely to do a little worse to much worse without assistance than with it: some remain out of work for long periods; some take part-time or poorly paid work, or work intermittently; some depend on spouses; and some become deeply discouraged and abandon the labor force.

Labor-Management Involvement

Some of the best projects serving displaced workers are those based in plants that are closing or undergoing major layoffs, and are run by people who work at the plant on both the labor and management sides. Plant-based labor-management committees have a personal stake in the outcome and know the workers involved. They also know the local business community, and are often able to turn up job openings among their acquaintances. Many employers can contribute space in the plant for a reemployment and retraining center, and they can supply staff, from both the company and labor sides, to operate the project before and after the layoffs. A strong union role contributes to worker acceptance and trust. Moreover, company and union people, when qualified, are especially effective as staff. Where unions do not exist, employee representatives can also serve effectively. Canada's IAS, for example, has quite often helped to establish joint worker-management committees in non-union plants. Most of the plant-centered projects that have been created in this country, however, did result from company-union cooperation.

An especially valuable service employers can offer before a major layoff is to invite prospective employers into the plant, to let them get acquainted with the workers while the plant is still operating. Managers in many kinds of firms have used this job-finding method successfully. A senior analyst in one business organization says:

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[35] U.S. Congress, Office of Technology Assessment, op. cit., pp. 231-233, 236-238.

[36] Kevin Balfe and Ruth Fedrau, "Summary Report: Review and Analysis of Company/Union Sponsored Comprehensive Displaced Worker Assistance Centers Receiving JTPA Title III Support," report to the Office of Technology Assessment, April 1986.

> Local employers don't always realize that some of the experience gained in large industrial plants (e.g., maintenance, shipping, etc.) is readily adaptable to their own needs. There may also be unfounded prejudice against the work force in a plant that is closing. ('They were overpaid and underworked.') Visits to a functioning plant have, in many instances, dispelled these doubts.[37]

The best time to enlist management and workers as active participants in displaced worker projects is before the plant closes or layoffs begin. Labor-management teams can be created afterwards—even as much as a year afterward, as happened in the case of the Midland, Pennsylvania, steel mill mentioned above. This team was formed, however, in rather special circumstances: a new owner, LTV Steel Co., bought the plant and restarted operations with a small work force of 300. Under its contract with the United Steelworkers of America, LTV agreed to mount a joint reemployment-retraining effort to serve the workers who had already been laid off. More often, however, the chance to form a labor-management adjustment committee is lost once the plant is closed. According to a report of The Conference Board:

> Notice is . . . critical because a functioning plant is, perhaps, the program's single most important resource.[38]

Preparation Time

The peak demand for help in finding new jobs or entering training usually comes in the days immediately following a plant closing. A second peak often comes about half a year later, when unemployment insurance is near exhaustion (this pattern holds in Canada as well as in the United States). Both because many workers are eager to start job hunting or retraining as soon as possible after layoff, and because a good displaced worker project can encourage others to do so, service providers agree that the project should be ready the first workday after the plant closing, or earlier if possible. For workers who are interested in training courses to improve their skills, an early start is especially important, since unemployment insurance—the main source of income support for most displaced workers in training—is generally limited to 26 weeks.[39]

How much time does it take to plan and set up a good project?[40] The ideal combination is several months' advance notice—clear, certain notice, with no wavering or ambiguity—and preparedness on the part of company, union (if there is one), and government agencies. With strong management and labor commitment, plus experienced public or private help, it is possible to set up a worthwhile project in less time, sometimes as little as a few weeks. With the shorter preparation time, however, services such as training courses and job development will not be ready when the project opens. Also, several extra weeks are useful to help workers come to terms with the job loss. There is some limited evidence that very long advance notice of more than a year may be less than ideal for worker adjustment projects. However, it may be that in the few cases where long notice appeared to inhibit effective adjustment services the real culprit was not length of notice but uncertainty—either about the layoff itself, or about which people would ultimately lose their jobs.

OTA's information about worthwhile projects set up on very short notice in U.S. plant closings and layoffs comes from a few cases involving large companies (in the Fortune 500 class) with a strong commitment to serving their displaced workers and the resources to provide startup funds for the project, the partnership of unions or worker representatives, expert private consultants, and an unusual degree of cooperation from the public agencies that controlled JTPA Title III funds.[41] Preparedness for fast action on the company's part has included these elements:

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[37] Ronald E. Berenbeim, Senior Research Associate, Corporate Relations Research, The Conference Board, letter to Julie F. Gorte, Project Director, Office of Technology Assessment, July 10, 1986.

[38] Ronald E. Berenbeim, *Company Programs To Ease the Impact of Shutdowns* (New York: The Conference Board, 1986), p. 7.

[39] For discussions of income support for displaced workers during training, see U.S. Congress, Office of Technology Assessment, op. cit., pp. 63-64, 256-258.

[40] The material in this section on the time and other factors required to set up an effective plant-based displaced worker project is drawn mostly from Balfe and Fedrau, op. cit.

- plans at the division or corporate level to provide help to displaced workers, including commitment of company resources—especially space and staff;
- assignment of decisionmaking authority to someone at the company or division level, and designation of someone in the plant to take charge of the company's part of the program;
- willingness to work with the union (if any) in planning and service delivery;
- announcement of a worker assistance program at the same time as the plant closing announcement;
- specific plans to do the necessary homework, such as collecting information about worker needs and characteristics and estimating costs of the program; and
- plans to find out what public funds and programs are available, and readiness to negotiate with State and local agencies to get them. In all the cases of projects starting up on very short notice that have come to OTA's attention, the company has been willing and able to pay the costs of operating the worker assistance center for a time, while negotiating with public agencies for additional funds.

For unions, an important element in preparedness is experience with worker assistance projects and a conviction that the services the projects offer are helpful. Also, unions as well as companies can contribute knowledge of and access to JTPA Title III programs.

An essential element for setting up a good project quickly is expert technical assistance. This may be obtained from private consultants, as is often the case in the United States, or from a government agency. The ability of JTPA Title III programs to respond promptly to plant closings with technical assistance, money, or both is discussed in another section below.

In Canada, about three-quarters of the work force is covered by Provincial and federal laws that require advance notice; the notice required varies from 8 to 16 weeks, depending on the numbers of displaced workers involved. In addition, many employers voluntarily give this much or more notice in Provinces that do not legally require it; or unions, local officials, or the news media may provide early warning. According to several Canadian IAS officials, it takes all of the 8 to 16 weeks to prepare effectively for the day after the closing or layoff, when demand for services is at a peak. The preparation involves counseling and assessment of workers, initial negotiation with government agencies for training and other services, and, most importantly, finding job openings in the hidden job market (i.e., openings that are never publicly announced) in the local and surrounding communities.

Having all the work of preparation done at the time of layoff is the ideal situation. However, some IAS officials report that they have given useful service even with the handicap of very little notice (which may occur in Provinces that do not require advance notice and in cases of business failure in Provinces that do). With its years of experience and well-developed ability to respond rapidly, the IAS can move into a plant in a matter of hours and, at the least, help to establish a labor-management adjustment committee with the promise of effective services to come. As one IAS official put it:

> Notice is great, and the more we have the better we can prepare. But notice itself is not enough. The process that goes with it is important.

The process that goes with it is not always enough either. Also important, indeed critical, is the state of the local economy. If unemployment is high and the local labor market narrow, it is a forbidding task to turn up jobs, even with the advantages of advance notice, early

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[41] Balfe and Fedrau, op. cit.

planning, and good operation of a displaced worker project. This reality is reflected in comments from company managers with experience in plant closings and permanent layoffs. In most companies that have tried giving advance notice, human resource directors are convinced of its value to displaced workers. A few, while favoring it as a decent way to treat employees, rate it as not very significant in helping the workers get a new job.[42] The few who expressed this opinion had had experience with closing plants that were the sole source of economic life in the community—"the only game in town." Where there are no other jobs except those connected with the plant that is closing, advance notice may be of less value.

Avoiding Plant Closings and Layoffs

Some of the support for requirement of advance notice comes from the idea that, given enough warning, management decisions to close plants or lay off workers may perhaps be changed, or a new owner—possibly the employees themselves—be found. Another possibility is that, with enough time and advance planning, companies can avoid mass dismissals through a combination of tactics such as incentives for early retirement, severance pay that bridges to retirement, transfers to other company plants, and normal attrition.

In some cases, early warning that a firm is in trouble, combined with assistance from government agencies and communities, have helped to turn the company around and avoid closure. In others, the changes needed for survival are so great that closing down is the only reasonable option. Moreover, when large multibranch firms decide to close down a plant or product line for strategic reasons, these decisions are not often amenable to change. Several critical elements are important to the success of efforts to keep a threatened plant in business. Among the key questions are these: 1) Are there realistic prospects for profitability, for either the present owners or others? 2) Are both management and labor willing to make sacrifices to create a more productive, efficient, profitable plant? 3) Is there enough time?[43]

The advance notice required under various laws and proposals in the United States and Canada is generally about 2 to 4 months—long enough to prepare displaced worker services but usually too short for rescue of a troubled firm. Although there are instances where even quite brief advance notice of a closing has triggered labor-management efforts or community assistance that helped the plant to survive, this seems to be an infrequent occurrence.[44] Possibly, attempts to avoid a plant closing might have the untoward effect of undercutting efforts to find new jobs for displaced workers, by adding an element of uncertainty. Workers who have put in 15 or 20 years at a plant, and often have gone through several temporary layoffs, usually find it hard to believe that a plant is really closing. To first give notice and then search for alternatives to a closing or layoff might fortify the doubts. For this reason, many managers think it is not a good idea to give notice until the company has made a firm decision to close the plant.

There may, however, be some less direct and more positive connections between advance notice and saving jobs. An example is in Massachusetts, where the Governor's Mature Industries Commission of 1984 developed a "social compact" that encourages companies to give displaced workers advance notice (90 days if possible) or pay in lieu of notice, extension of health benefits, and reemployment assistance.

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[42] Two officials of forest products companies interviewed by OTA staff expressed this opinion. See the discussion in the section entitled "U.S.-Based Companies in Canada: The Forest Products Industry."

[43] For a brief discussion of conditions in which government or community assistance may help to save troubled plants, see U.S. Congress, Office of Technology Assessment, op. cit., pp. 209-211.

[44] The little quantitative evidence on the subject indicates that advance notice does not often directly prevent plant closures. See Anne Talcott Lawrence, "Organizations in Crisis: Labor Union Responses to Plant Closures in California Manufacturing 1979-83," unpublished doctoral dissertation, Department of Sociology, University of California, Berkeley, November 1985, pp. 167-169, 172-173. However, there are individual cases in which closing decisions have been altered after advance notice was given. An example was the reversal of a 1983 decision by the Kelsey-Hayes jet engine company to move out of Philadelphia. City officials helped the company find a new site, where the plant reopened and retained about half its original work force. See Martin and Wigglesworth, op. cit.

Companies that get financial assistance from certain quasi-public State agencies must, by law, abide by the social compact insofar as possible.[45] The State encourages others to do so. As part of the same program, Massachusetts also offers technical assistance and "high-risk financing" for firms that are in trouble but considered viable. By May 1986 the State's Industrial Services Program had worked with 88 companies, with 73 still surviving. According to State officials, the connection between advance notice and the program of assistance to troubled firms is "nebulous" but does exist. Although plant closing decisions, once announced, are rarely reversed, the law has on the whole drawn attention to the possibilities of avoiding closings and layoffs. Also, the State sometimes helps to arrange a sale to a new owner after a plant has closed, and it provides funds to do evaluations of worker buyouts.

In firms that are not going out of business but are reducing their work force, advance planning can help to limit or avoid layoffs. Again, the connection with advance notice is not very clear. For example, a pulp and paper plant operated by a Canadian subsidiary of a U.S. firm (described in a later section) has eliminated about 200 of 870 positions in less than 2 years, in the course of modernizing the plant. So far, no one has been laid off involuntarily. The company has handled the job reduction by early retirement, large severance payments to senior workers who leave voluntarily, and the use of surplus workers for vacation replacements. Company managers are counting on attrition to open permanent jobs for these floating workers. The impetus for the company's planning to avoid layoffs was an economic development grant it got from the federal and Provincial governments, on the condition that the impact on workers of the modernization be kept to a minimum. At one point, when it was not clear that layoffs could be averted, the company gave advance notice to 140 workers; this was useful in helping workers to face the reality of work force reduction, according to company officials. But advance notice was only one piece of the company's program to avoid layoffs as much as possible.

As discussed in a later section, some countries require consultation with worker representatives before group layoffs can take place. The purpose is to require consideration of alternatives to the planned layoffs or plant closings that will avoid, or at least mitigate, job losses. Critics of mandatory consultation argue, however, that it interferes with managers' freedom to make decisions and thus hinders flexibility and economic growth. Adding substantial costs to closing down a business makes it harder to start one up, they say.[46] Whenever a proposal to require consultation before mass layoffs has been made in the United States, it has generated heated controversy, with business people mostly in strong opposition and many labor spokesmen in favor. In voting on H.R. 1616 in November 1985, the House of Representatives rejected such a requirement.

At the workshop, one union official said:

> At least we can talk. It's a myth that companies should have absolutely no infringement on their unilateral decisions to close plants, decisions that affect thousands of people. What's wrong with talking about it? After you talk about it then go ahead and make the decision.

Business spokesmen at the workshop, like employers generally, thought that any requirement for consultation before layoffs would be harmful to economic health. Some said, however, that they did not necessarily oppose voluntary consultation. When a closing or mass layoff is in prospect, voluntary consultation with workers may sometimes lead to bargaining for concessions on wages or work rules to help keep the plant going.

Although advance notice may only seldom prevent plant closures, it does seem to improve the chances of a union's negotiating ad hoc severance benefits packages for workers caught in the closing.[47] Under U.S. labor law, companies have no legal obligation to bargain with unions over the decision to close a plant, but employers are required to bargain in good faith on the effects of the closure on employees. Ad hoc plant closure agreements, negotiated after announcement of a closure, range from minimal requirements, such as for payouts of unused vacation time, to complex pacts covering severance payments, extended health benefits, rights of transfer to other plants, early retirement, and other benefits.

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[45] The law does not strictly require adherence to a single set of standards for advance notice or benefits to workers; its requirements are applied by State officials with regard to the circumstances of individual firms. See the later discussion in app. B.

[46] For an exposition of this argument see, for example, Lawrence B. Fine and Steven R. Wall, "Plant Closing Laws: More Harmful Than Helpful?" *Legal Times*, Oct. 28, 1985.

A study of labor union responses to plant closings in California in 1979 to 1983 found that "the single most important predictor of the union's success in winning ad hoc severance benefits (whether or not it already has provisions in the contract) is the amount of advance notice it receives of the closure."[48] The greater the advance notice, the greater the chance of getting an agreement, with the chances rising from 8 or 9 percent when 0 to 3 weeks' notice is given, to 59 percent with 4 to 12 weeks' notice, and to 80 percent with more than 12 weeks' notice.

Benefits to Companies

Many companies have voluntarily adopted a policy of giving advance notice of permanent layoffs or plant closings to all employees whenever possible. Often, the foremost consideration is ethical; managers say: "We owe these people something," or "We believe in fair treatment for our employees." They also mention the advantages of earning loyalty and better regard from remaining workers, as a result of fair treatment for those they have to let go, and enhanced standing in the community. In addition, companies may benefit from lower unemployment insurance taxes in the future if they can help to shorten the period of unemployment for their laid-off workers. However, State systems vary. In many, the experience rating of employers is inadequate, so that UI tax rates do not accurately reflect the frequency or length of unemployment that a company's employees experience.

Benefits to Individual Workers

Aside from what organized programs can do for displaced workers, people benefit from knowing if their jobs are about to vanish. They can avoid some financially disastrous decisions —buying a new car, for example, or deciding that the family can do without the extra money from a spouse's job. Some workers will use the time to think about new jobs, or perhaps a change in occupation, and to come to terms with the loss of the old job. Despite the common observation that many workers do not believe that the plant will close until the day it happens (sometimes, not until a plant is torn down), some do begin to adapt when they receive notice, taking such practical steps as preparing resumes and making contacts with potential employers. Hardly anyone, on principle, disagrees with Stan Winvick, Vice President of Human Resources at the California semiconductor firm, Advanced Micro Devices, Inc.:

> When a company is considering a step as drastic as pulling someone's job out from under them, that person has a right to know what is going to happen to them and try to plan for it.[49]

Costs

Opponents of legal requirements for advance notice usually agree that notice is humane, decent, and helpful; many business people who oppose legal requirements report that their own firms give as much notice as possible. They also emphasize, however, that a good program of adjustment services far outweighs in importance the benefits of advance notice per se. Against *mandated* advance notice they argue the need for flexibility; they do not believe that they will get it from government, even if the law has escape clauses. Legal requirements, some say, inevitably imply red tape, audits, and government interference. Most employers prefer voluntary cooperation with public agencies on worker adjustment programs; they say that you cannot legislate corporate responsibility. In their view, the benefits of mandated notice are not worth the costs. A few think that voluntary advance notice, as a company policy, is also too costly. The costs most often mentioned are possible losses of a firm's credit, customers, and key employees. The risks of these losses are seen as greater for smaller businesses.

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[47] Lawrence, op. cit., pp. 170-177.

[48] Ibid., p. 171.

[49] Sheridan, op. cit.

As noted above, OTA relied as much as possible on experience and empirical data in analyzing costs and benefits of advance notice. Since notice is not required in most of the United States, companies that voluntarily give notice or include it in collective bargaining contracts have presumably found that the benefits, from their perspective, outweigh the costs. Those that do not give notice may have concluded that the costs are greater than the benefits—but empirical evidence of the costs is lacking in such cases, because notice was not given. Where possible, this section relies on the experience of firms that gave advance notice; however most of the section relies on the judgment and opinion of business representatives.[50]

Every Case Is Different

It is argued that advance notice does not make sense in some cases. For example, a large multibranch company in many lines of business decides to sell off one of its lines—telephone handsets, say. Included in the sale is the company's order book (which lists its customers) as well as all its plants that manufacture handsets. Up to the last minute, the company tries to sell all of its plants, but only three of four are finally sold. It is useless to continue production in the fourth plant, because the product name and customer list have been sold along with the other three plants. In the real case on which this example is based, the company customarily gives advance notice of closings or layoffs. In this instance, it did not give notice. Workers who lost their jobs in the plant that remained unsold and had to be closed received up to 4 weeks' extra pay in lieu of advance notice, in addition to regular severance pay. Pay in lieu of notice is an option that some legislative proposals (e.g., H.R. 1616) mandating notice have included. But, as noted above, companies prefer to avoid the regulation and audits that they see as tied to legal requirements. Also, some want to be free to negotiate with unions on other alternatives to advance notice—for example, extended health benefits.

Small Business

One aspect of the need for flexibility is that small businesses face unique problems, which need to be better understood. It is hard enough for the owner of a small business to keep up with his cash flow problems, said one businessman, much less with advance notice of layoffs. "You talk to a small businessman about 2 or 3 months' notice; he's worried about paying on his loan next week and whether his customers will pay on time." Andrew Johnson of the Electronics Association of California, which represents more than 600 smaller electronics firms in the State, said: "I can hear the CEOs now saying, 'I'm hemorrhaging here and you're telling me I can't lay people off for 90 days.' "[51] Though supporting advance notice as a matter of national policy, Johnson thought that companies with fewer than 200 employees probably would not and could not comply. Large companies have staff and financial reserves; small ones may not even have a personnel manager.

Before Massachusetts passed its mature industries legislation, a Governor's commission studied the problem of plant closings for a year. One official who took part reported: "The small business issue came up a lot. The smaller companies were clearly terrified. They did not feel they had the lead time to comply with advance notice rules or guidelines." For this reason, the Massachusetts social compact applies only to companies with 50 or more workers. State laws in Wisconsin and Maine apply only to firms with 100 or more employees. Although establishments with 100 or more employees are only

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[50] Evidence from Canada would be useful, since about three-quarters of the Canadian work force is covered by advance notice requirements. OTA is not aware of any systematic survey of Canadian firms to discover costs that may be associated with advance notice in that country. Statements from the Canadian and Ontario Chambers of Commerce, information from Canadian Government ministries, a literature search, and OTA's case study of U.S.-based forest products companies in Canada all suggest that advance notice is not a controversial issue in Canada.

[51] Sheridan, op. cit.

2 percent of U.S. business establishments, they account for 44 percent of the private work force, aside from the self-employed.[52]

Losing Customers

This is not a problem for large companies that will continue to manufacture the same product in another plant, or for companies that are selling their customer lists with the sale of a plant. It is also not a problem when the product is a standard commodity such as plywood, easily replaceable from another source; but it could present a real difficulty with a specialty product or one in which the brand name is important, according to a forest products company official. Although it seems plausible that a firm might indeed lose customers when it gives notice of closing, no actual case of this kind came to OTA's attention. This is perhaps not surprising since most of OTA's first-hand informants were larger companies, some with multiple branches, and small companies may be most vulnerable to loss of customers.

Termination of a product may be at least roughly analogous to going out of business, so that IBM's experience with its small personal computer, the PC Jr, may shed some light on the question of customer loss. The PC Jr was never very successful, and in March 1985, 14 months after the first shipments, the company announced that the PC Jr would be discontinued. Sales declined significantly throughout the following year—despite escalating discounts and dealer rebates, and despite the fact that continued parts and service were guaranteed by one of the world's most stable companies. A smaller and less stable company would almost certainly have seen sales plummet even faster. According to one industry analyst, the "premature" announcement by the Osborne computer company that it had a new product ready to market was an important factor in Osborne's collapse. After the announcement, the older model computer could not be sold.

Losing Access to Credit

Another argument is that a company may find that loans from financial institutions dry up or that suppliers tighten their line of credit if there is evidence of financial trouble, such as notice of layoffs. For example, one company spokesman said:

> We deal with a lot of people that have gone under. We have credit limits. If the companies we supply are in trouble or announce a shutdown, we might limit credit to such a degree that they could go under.

An official of the National Governors' Association has found in conversations with businessmen across the country that possible loss of credit is their principal concern with advance notice legislation.[53] Loss of credit may also be a special problem for smaller companies.

Losing Key Employees

Companies do report this problem first hand. One company said it had closed a forest products facility in a Southern State about 10 years ago, had given notice of the closure, and then did not have enough workers left to close the plant down in an orderly way throughout the notice period. Some companies do not give severance pay to workers who leave before the closing or layoff, although they make exceptions in individual cases. This may make it harder for some workers to find a new job without going through a period of unemployment; but it assures the company of an orderly shutdown. Other companies give severance pay to all workers regardless of whether they stay, but offer key employees stay-on bonuses—which amounts to an added cost of advance notice. According to The Conference Board study, executives and professionals are inclined to leave the company after receiving advance notice, whereas few assembly line workers look for another job or leave before the last day of work.

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[52] U.S. Congress, General Accounting Office, op. cit. An establishment is a business carried on at one location; it may be independent or may be a branch of a multibranch firm.

[53] Kris M. Balderston, Research Associate for Community Development, National Governors' Association, personal communication, July 23, 1986.

Unforeseen Events

When economic conditions outside the company's control are changing fast, businesses may not be able to anticipate layoffs. For example, an independent oil tool manufacturing company had nearly 1,800 employees in 1985, and in the spring of 1986 was down to about 300. In a 1982 layoff, this company gave 6 months' notice and allowed workers as much as 90 days for full-time job hunting while they were still on the payroll. By 1986, the company felt it was doing well to give 30 days' notice. Again, most existing and proposed advance notice laws make allowances for business exigencies, but company spokesmen say that marshaling proof that business conditions made it impossible to comply could be a heavy burden. When a firm's survival is at stake, it cannot afford to spend managers' time on compiling a record to show that it acted within the law.

It is worth noting that dire financial emergency seems to be an infrequent factor in plant closings and large layoffs. The GAO survey of mass layoffs in establishments with over 100 employees found that only 7 percent of the firms said they had undergone bankruptcy or financial reorganization before the layoff. By contrast, 70 percent of the firms cited reduced product demand and increased competition as factors influencing the decision to lay off workers or close a plant; more than half mentioned high labor costs.

Media Attention and Community Resistance

Almost inevitably, any large closing attracts public attention. Economic repercussions from the closing affect the community as well as the workers directly losing jobs. Said one businessman at the workshop:

> If you notify in advance about a closing, you'll get unabated pressure . . . You get it from the church, the Governor, the laundryman. Lots of companies don't need that heat. They want to get out of town fast . . . Severance pay at the end can accomplish the same thing as advance notice.

This man's company does, in fact, provide advance notice under some circumstances, as spelled out in its union contracts. Generally, the company's experience with advance notice has been good, but that experience, said the company official, is not necessarily a model for everybody. For some firms, the most economical course is to close quickly.

Trouble With Workers, Reduced Productivity

There seems to be general agreement that this is a myth.[54] One man, representing a company that over the past few years has sold or closed plants employing 25,000 workers, said:

> In every plant I've ever closed, productivity goes up in the last two or three months.

At a sawmill in British Columbia, workers not only broke production records after the closing announcement, but improved safety so much that there were no accidents. The representative of a large U.S. company said:

> There's been no sabotage, no destruction in our company after advance notice. Employees may want to make the plant more attractive to another owner. Also, there's a lot of pride. Basically, people are good people.

The Thin End of the Wedge

An objection that is not often stated but seems to be on the minds of many opponents of mandated notice is that a simple notice requirement might open the door to other more costly obligations related to plant closings. In Ontario, for example, Provincial law not only mandates 8 to 16 weeks' advance notice of group layoffs (50 or more), but also requires severance pay for employees dismissed in group layoffs (1 week's pay per year of service, up to 26 weeks, for workers with 5 years or more on the job). The version of H.R. 1616 which was narrowly defeated in the House of Representatives in November 1985 required advance notice only, with provision for pay in lieu of notice and for exceptions if unforeseeable business circumstances prevented the employer from completing the notice period. However, an earlier version of the bill, reported out of the House Education and Labor Committee, would have required employers to consult in good faith with the union or worker representatives on possible alternatives to, or modifications of, a proposed closing or layoff. The bill defined "good faith consultation" as including the obligation to provide employee representatives with relevant information to evaluate modifications or alternatives to the closing. Business representatives lined up against the consultation requirement, characterizing it as a "powerful weapon to block plant closings" that would "tend to lock businesses into inefficient operations and unprofitable product lines."[55] (Business groups also continued to oppose H.R. 1616 after the consultation provision was removed.) Other legislative proposals over the years have gone far beyond the provisions in H.R. 1616, including such requirements as severance pay, extended health benefits, and training assistance.

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[54] All representatives of business at the workshop agreed that worker morale and productivity did not suffer with advance notice of layoffs or closings. Union spokesmen confirmed the observation. So did the company officials interviewed for case studies of the forest product and high-tech industries.

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[55] Labor Policy Association, Inc., "Special Memorandum: XIII-6 Re: Markup of Plant Closing Legislation by the House Education and Labor Committee," July 18, 1985. The Labor Policy Association is located at 1015 15th St., Washington, DC 20005.

RESPONSES TO ADVANCE NOTICE

Once a plant gives advance notice of a closing or layoff, what then? Assuming that the company is not in dire financial straits, it may provide its displaced workers with severance pay and other benefits that will ease the transition to a new job. Some companies do more, committing staff, space, and energy to efforts to find new jobs for their laid-off employees. In general, though, a comprehensive worker adjustment project, including counseling, assessment, job search assistance, and retraining, costs more than most companies are prepared to spend. Moreover, many companies have no experience with displaced worker services, and have no idea how to begin.

Government programs—mainly the JTPA Title III program—are intended to help organize and pay for the services displaced workers need; and the law provides that workers can begin to get services before layoff, as soon as they get notice of termination. Yet despite the consensus that the sooner displaced workers get help the better, delays in getting JTPA assistance seem to be the rule, not the exception. States are responsible for operating the JTPA Title III program; no one has systematically surveyed the States on their ability to respond rapidly and effectively to notice of plant closings or layoffs. On the available evidence, it is fair to say that, although most States are interested in providing a rapid response and many are improving, few are able to do it satisfactorily as yet.

Moreover, it appears that relatively few displaced workers ever get help from JTPA programs. OTA estimated that it is likely that about 1 out of 20 eligible displaced workers are being served.[56] A recent estimate from California's Santa Clara County (Silicon Valley) is that about 1 out of 35 workers losing jobs in the county's high-tech industries were getting JTPA-funded services in 1986.[57] This does not imply that all adult workers displaced from their jobs want or need reemployment and retraining services. Some of them—especially the younger and better educated—have little trouble finding new jobs. But many others—hundreds of thousands a year—remain out of work for months or even years, or settle for part-time or low-wage jobs. Many of the people that government-sponsored displaced worker programs are designed to help are not getting help.[58]

Employer Responses

A substantial fraction of larger establishments report that they give some form of severance benefits to at least some of their employees who lose jobs in plant closings or major work force reductions. Employers more often provide help of some kind to white-collar than to blue-collar workers. The most common form of assistance is severance pay, which slightly more than half of employers provide to displaced white-collar workers; about one-third offer it to blue-collar workers. Other kinds of help, offered less commonly but still fairly often, are continued health insurance and placement assistance of some kind.

It is not clear that the majority of displaced workers receive severance benefits of any sort from employers. First, the information we have about services to displaced workers comes from larger establishments; smaller firms may not provide as much assistance. Second, blue-collar workers represent 60 percent of those displaced,[59] but are less likely to get help from employers than white-collar employees.

National Patterns

The GAO survey of establishments with 100 or more employees that had a plant closing or major layoff in 1983 and 1984 questioned company officials about severance benefits as well as advance notice. Table 4 shows the kinds of assistance given, and a breakdown by white-collar and blue-collar workers. The most common forms of financial assistance were severance pay (54 percent of the companies said they gave it to some or all workers), and continuation of health insurance benefits (43 percent). White-collar workers were much more likely to get both kinds of benefits—53 percent of employers said they gave white-collar workers severance pay, versus 34 percent for blue-collar workers; 42 percent provided continued health insurance for white-collar employees, versus 32 percent for blue collar.

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[56] U.S. Congress, Office of Technology Assessment, op. cit., p. 174.

[57] Sheridan, op. cit., p. 23.

[58] For a broad discussion of worker displacement and an evaluation of programs to help displaced workers see U.S. Congress, Office of Technology Assessment, op. cit.

[59] Michael Podgursky and Paul Swaim, "Labor Market Adjustment and Job Displacement: Evidence From the January, 1984 Displaced Worker Survey," a report to the U.S. Department of Labor, Bureau of International Labor Affairs (Amherst, MA: University of Massachusetts, Department of Economics, January 1986). This report analyzed data from the Bureau of Labor Statistics' survey of adult workers displaced from their jobs between January 1979 and January 1984.

The same pattern prevailed for placement assistance. Thirty-two percent offered job search assistance to white-collar workers, and 25 percent offered "administrative support," which includes such things as secretarial help with resume writing. The comparable figures for blue-collar workers were 21 and 16 percent.

The Conference Board survey asking similar questions found a larger proportion of employers providing assistance to laid-off workers. Seventy-nine percent of the companies answering the survey questions said they gave extended health insurance benefits; 54 percent continued the benefits for 3 months or longer. Nearly 60 percent reported they offered salaried employees help in resume writing. Other forms of assistance in getting a new job were provided less frequently; these included contact with other companies, job search workshops, paid leave to look for another job or, in a few cases, retraining. For hourly employees, about half the companies contacted other companies on the workers' behalf; a smaller number of employers reported that they offered other kinds of placement help to hourly workers.[60] As discussed in an earlier section, the different results from the GAO and The Con-

Table 4.—Assistance Offered to White-Collar and Blue-Collar Workers

	Establishments offering assistance to workers		
Type of assistance	White collar (N = 309)	Blue collar (N = 292)	Overall[a] (N = 315)
Financial assistance:			
Severance pay	53	34	54
Continuation of health insurance	42	32	43
Continuation of life insurance	27	21	28
Early retirement	15	10	16
Pay in lieu of notice	14	10	15
Lump sum payment	9	9	10
Supplementary unemployment benefits	8	9	10
Placement assistance:			
Job search	32	21	31
Administrative support	25	16	26
Personal counseling	19	14	19
Company transfer option	21	10	21
Time off for job search	21	9	20
Career counseling	17	10	1[illegible]
Relocation assistance	15	5	15
Testing/assessment of worker skills	5	3	5
Occupational training	1	3	3
Job club	2	2	2

[a] Establishments providing assistance either to white-collar workers or blue-collar workers or both.

SOURCE: U.S. Congress, General Accounting Office, "GAO's Preliminary Analysis of U.S. Business Closures and Permanent Layoffs During 1983 and 1984," paper for presentation at the OTA-GAO workshop on plant closings, Apr. 30-May 1, 1986.

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[60] Berenbeim, op. cit., p. 9. Chart 3 in the published report indicates that over 60 percent of companies offered hourly employees outplacement assistance, but this figure is in error. The correct figure, according to the author (personal communication), is 39 percent. Outplacement assistance was provided to about 50 percent of salaried employees.

ference Board studies probably reflect differences in how the surveys were conducted.[61]

The quantitative information from these two surveys is not very detailed, and the kind and quality of services offered are usually not very closely defined. "Placement assistance," for example, might be anything from a full-service reemployment and retraining center, including energetic efforts to find job openings that are not publicly listed, to a bulletin board with postings from the local Employment Service office. Severance pay might be anything from 2 weeks to a year.

On an individual basis, there are many accounts of firms that have provided exemplary services to their displaced workers.[62] Some of the best displaced worker projects, in fact, have been those based in plants that were closing or laying off, and were directed by labor-management committees. Valuable contributions employers can make include space in the plant for employment and training centers and for suitable training courses (e.g., remedial education); paid staff, both from the union and management side, to run the centers; time off for employees to attend counseling and job search workshops; and personal contacts with prospective employers. Some companies keep employment centers located in plants open even after the plant closes. Some, as discussed below, advance most of the funds to operate employment centers while awaiting money from government programs. Among the company-union programs that have given outstanding service to displaced workers was the Ford-UAW program in an auto assembly plant that closed in Milpitas, California, in 1983. A labor-management committee created a retraining and reemployment center in the plant within days of the closure announcement, which was made 6 months in advance; the company kept a plant building open to house the center and paid a small staff to operate it for 16 months after production ended.[63]

Of course, not all employers are able to set up a full-service reemployment center for their displaced workers; however, many large companies that are closing plants in the course of restructuring their businesses can afford to provide top-quality assistance. But some do not know how. And some are rather perfunctory—for example, they may hire a consultant to run job search workshops for a few days. Some do almost nothing. The range of practice among different companies and different industries is wide.

Case Study: Silicon Valley

In the high-tech industries of Santa Clara County, California, for example, the general pattern is that laid-off workers get little notice and few benefits; yet layoff practice varies greatly from one company to the next.[64] Quantitative information is sparse, but knowledgeable observers say that a typical package in Silicon Valley is 2 weeks' severance pay, no continuation of health insurance benefits, and little placement assistance from the employer.[65] Except for defense contractors, Silicon Valley is almost entirely non-union; here as elsewhere, non-union workers generally get less advance notice and fewer severance benefits than unionized workers.[66] There are striking differences among individual firms however. At one end of the spectrum are some of the circuit board assembly job shops, which employ less-educated workers (often illegal aliens), and which simply cut the workers loose with no notice and no benefits if business drops off. At the other end are companies like Hewlett Packard and Advanced Micro Devices, which laid nobody off in 1985, when tens of thousands of high-tech workers were losing their jobs.[67]

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[61] The GAO study was based on a random sample of all U.S. establishments with 100 or more employees that experienced a plant closing or major layoff in 1983 or 1984. There was more self-selection in The Conference Board sample; it was made up of 224 companies that: 1) replied to a questionnaire sent to 1,900 large companies, and 2) had at least one plant closure in the period 1982-84.

[62] See, for example, U.S. Department of Labor, Labor Management Services Administration, *Plant Closings: What Can Be Learned From Best Practice* (Washington, DC: U.S. Government Printing Office, 1982); U.S. Congress, Office of Technology Assessment, op. cit., ch. 6; Berenbeim, op. cit., Part II.

[63] See Berenbeim, op. cit., pp. 51-57; and U.S. Congress, Office of Technology Assessment, op. cit., p. 237 and ch. 6, passim, for more detailed descriptions of the Ford-UAW Milpitas program.

[64] The definition used here for high-tech industries in Santa Clara County is rather narrow; it includes electronic equipment and parts (including semiconductors), computers and computer peripherals, and instruments.

[65] Sheridan, op. cit. Most of the material in this section, unless otherwise noted, is drawn from Sheridan's contract report to OTA.

[66] Richard Freeman and James Medoff, *What Do Unions Do?* (New York: Basic Books, 1984), pp. 64-65, cited in Sheridan, op. cit. The GAO plant closing survey also found that union blue-collar workers are more likely than non-union workers to get advance notice.

Thirty-seven percent of Santa Clara's 200,900 high-tech workers are employed by firms with fewer than 100 employees; in the smaller of these firms, failure rates—and displacement of workers—are typically high. However, many thousands of workers have been laid off from larger firms in recent years as employment in the industry has shrunk. For example, from 1983 to 1985, one company—Atari, the videogame and home computer manufacturer, owned at the time by Warner Communications—permanently laid off more than 5,000 people.[68] In 1985 alone, at least 10,000 workers lost jobs in 36 layoffs announced by high-tech firms employing 500 or more people.[69]

Some of the larger high-tech companies, while about equal to the industry norm in severance pay and other financial benefits, do offer more job-hunting help. For example, National Semiconductor, which had sales of $1.8 billion and a worldwide work force of 38,000 as of 1984, laid off 1,600 employees in California, Utah, Connecticut, and Virginia in 1985. The company gave only 2 weeks' advance notice and 1 to 4 weeks' severance pay, but offered considerable placement help. It assigned a job counselor to every worker, provided job-hunting advice, held workshops on job search skills and financial planning, and kept a job resource center open for 4 months. While the placement assistance was useful to many white collar and professional workers, it proved less helpful to blue-collar workers, partly because the staff had little experience with these workers.[70] Intel, another large company (21,500 employees), provided similar placement help to 2,000 employees who were laid off in 1985 to 1986; this company gave no advance notice but provided 2 to 9 weeks' severance pay.

Some companies offer much more than the industry norm to their displaced workers. For example, when Apple Computer, Inc., laid off 1,200 permanent full-time workers in 1985, all of them—even those just hired—got at least 6 weeks' severance pay. Apple's placement center was highly successful, helping 90 percent of the displaced workers find jobs before their severance pay ran out. Also, Apple gave its laid-off workers first chance at jobs in the company when it began to rehire. (About 1,500 temporary workers laid off at about the same time as the permanent workers did not receive severance benefits.)

The companies that have managed to avoid layoffs—such as Hewlett Packard and Advanced Micro Devices in California and Materials Research Corp. in New York—use an array of devices, including hiring freezes and attrition, reassignment of surplus workers to unaccustomed tasks (tending the flower beds, for example), pay cuts for managers and professionals, and a 4-day workweek for production workers. (California is one of the States with short-time compensation in the unemployment insurance program, so that workers on a 4-day workweek can collect UI for the fifth day.) Rolm Corp. (recently bought by IBM) was able to survive recessions and shifts in demand by changing the products it made and sold, and never laid anyone off in 15 years.

These kinds of benefits and job protection are exceptional even for regular employees, and in any case do not extend to the industry's many temporary workers. On the whole, high-tech workers in Santa Clara County appear to get modest severance benefits from employers, and temporary workers, whose presence in Silicon Valley is rapidly growing, get little or none.

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[67] As noted above, Advanced Micro Devices announced in August 1986 that, after continuing financial losses, it would have to depart from its no-layoff policy.

[68] Telephone interview with Philip Shapira, doctoral candidate, Department of City and Regional Planning, University of California, Berkeley, July 14, 1986.

[69] Telephone interview with Rica Pirani, San Jose office of the California Employment Development Department, July 15, 1986.

[70] David Sheridan, personal communication, July 25, 1986.

Government Responses

The main source of government help to displaced workers is the federally funded, State-run programs authorized by Title III of the Job Training Partnership Act of 1982 (JTPA). Title III programs can offer reemployment and retraining assistance to workers before they are laid off, so long as the workers have received notice of termination. Several States are putting a good deal of effort into prelayoff services. Title III programs can also support plant-centered projects, begun before layoff in cooperation with management and labor. It appears that few of the programs are doing so.

The observations in this section are based on anecdotes and partial reports, not on any systematic survey. They do represent a quite consistent sense among informed observers of the current state of government response. On the whole, it appears that most States have not yet organized their Title III programs in ways that make it easy to respond rapidly and effectively to plant closings and mass layoffs. Only a minority of Title III programs take the initiative to serve displaced workers, even when employers give early warning of a closing or layoff. Few if any States are organized to help employers and workers set up labor-management committees to operate plant-based displaced worker centers, despite the many advantages of this kind of project.[71]

More than 2 years after States officially began their Title III programs, many companies still do not know that the programs exist. If they do know, and ask for help for their workers, the response—either in the form of technical assistance or funds or both—is often slow in coming (though there are recent improvements among local JTPA agencies). Some delays seem built into the JTPA funding structure—especially in dispensing the Secretary of Labor's discretionary fund which, paradoxically, was designed in part for responses to unforeseen plant closings. Getting Title III funds to where they are needed, when they are needed, seems hard to accomplish; and the difficulties are compounded with the 1986 funding cut, which is hardest on States that started an active displaced worker program early and have little carryover of funds from previous years. The result is that many displaced workers who could use help do not get it.

Programs for displaced workers are quite new. State Title III officials believe their programs will improve as they gain experience, and point to a creditable placement record (65 to 70 percent nationwide) for the workers served in the program's first 2 years. Many States would welcome more technical assistance from the U.S. Department of Labor in how to run successful programs, possibly in the form of an information clearinghouse. States also emphasize the need for stable adequate Federal funding of the Title III program.

Most States are keenly aware of the need to improve their rapid response abilities. In the spring of 1986, when the National Governors' Association and the U.S. Department of Labor organized two conferences on how Canada's Industrial Adjustment Service works, 35 States signed up. The conference organizers had expected about 10. Clearly, the interest is there. Some States are already doing a fair job of rapid response to plant closings, and many others are improving or want to begin.

Rapid Response Teams

Several States—among them Arizona, Connecticut, Massachusetts, New Jersey, Rhode Island, South Carolina, and Texas—have rapid response teams which attempt to find out about impending layoffs and bring services to the workers early. Since most States do not require advance notice of closings, the teams use various methods to learn about planned layoffs; often they try to get voluntary cooperation from companies in giving early warning, and a number say that they are increasingly successful in getting this cooperation. Typically, rapid response teams mobilize and coordinate responses from a number of State and local agencies. A team representative may visit the plant, bringing some services (such as testing, assessment, and signup for unemployment insurance) to the site, and acquainting the workers with other services, such as job search assistance and referral to training.

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[71] For a discussion of experience with plant-centered displaced worker projects see U.S. Congress, Office of Technology Assessment, op. cit., pp. 234-236.

A few States, coming closer to the Canadian model, try to enlist the company as cosponsor of displaced worker services, establish resource centers in the plant, and staff them as much as possible with company employees and laid-off workers. The Massachusetts Industrial Services Program, for example, has set up half a dozen centers in plants, and other centers in nearby sites such as union halls or community colleges, to serve everyone involved in a big plant closing or layoff. Within a day—often within hours—of a plant closing announcement, a top official of the State program meets with the chief executive officer of the company to plan services for the workers. Direct contact between a person with authority from the State and someone with authority from the company, said one State official, "takes off months" in getting the program going. Union representatives are also asked to participate.

Companies are encouraged to donate space and pay some staff for the center, and the Industrial Services Program provides funds for training and paying other staff members (usually hourly workers who have lost their jobs in the closing). Massachusetts officials report success in employing displaced workers as staff in these reemployment and retraining centers. One said: "We will not fund the program if there are not at least one or two of the displaced workers serving the people. I haven't seen one smart, caring worker who can't pick it all up in three months." One of the 50 displaced worker centers established by steel companies and the United Steelworkers of America in the Monongahela Valley is directed by a former underground coal miner.

While the Massachusetts program strongly encourages participation by both employers and workers, it is not structured to help labor-management committees take charge of reemployment efforts, as the Canadian IAS does. No State, in fact, has an institution comparable to the IAS, though some have shown a strong interest in creating such an agency.

Technical Assistance for Plant-Based Projects

When companies and worker representatives go to a JTPA agency for help in setting up a comprehensive, plant-centered displaced worker project,[72] they usually get funds—though sometimes with a delay of several months or even more than a year. Most of the time, according to two experienced private consultants, the public funding is offered "passively or reluctantly but, in the long run, cooperatively," although firms quite often complain about rigid bureaucratic requirements.[73] As a rule, however, the Title III programs offer only funds, not expert help, to plant-based projects. In at least two-thirds of the cases the consultants studied, the JTPA agency did little more than handle the mechanics of grant administration.

This passive public role is not characteristic of every State or local JTPA agency. Increasingly, some agencies are taking an active part in plant-based displaced worker centers, providing planning help, staff, or referral services. However, even the more active JTPA agencies are usually not geared toward educating and encouraging management and workers to help themselves. Typically, these agencies will come to a plant, explain the services they have to offer, market their expertise, assure companies that workers will receive high-quality professional help, and ask for referral of workers.[74] Sometimes they ask the company to help with match funding, but often they do not seek any contribution from the company.[75] In a few instances, JTPA agencies have opposed the creation of a plant-based project, on the grounds that a communitywide project under the agency's direction already exists, and that scarce

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[72] The JTPA agency is usually either a unit of local or State government or the local Private Industry Council, a body defined by the law which includes a majority of members from private business but also includes representatives from organized labor, education and rehabilitation agencies, economic development agencies, community-based organizations, and the Employment Service.

[73] Balfe and Fedrau, op. cit.

[74] Ibid.

[75] Ruth Fedrau, personal communication, July 18, 1986.

Title III funds should be used efficiently. Overall, it appears that few JTPA agencies are prepared to give companies and workers prompt expert assistance in setting up plant-based displaced worker projects. Companies that are determined to move ahead often hire private consultants to help get the project underway.

By contrast, the Canadian IAS has developed through its 20 years of experience a simple, inexpensive way of providing technical assistance to plant-based projects. First, a field officer of IAS calls on companies that are closing plants or laying off workers, nearly always within a day of the announcement, to offer help. The officer explains how a labor-management adjustment committee can be created, and offers government funds to pay half the costs; he is authorized to commit up to $15,000 without consulting superiors. Once the company and workers agree to form a committee, IAS furnishes a list of experienced independent chairmen (many are retired businessmen) who can provide leadership and know-how. By all accounts, the independent chairman plays a crucial role. His technical expertise keeps the committee's work on track, and his impartiality gives the committee credibility with the workers. Chairmen are, in effect, in the business of getting displaced workers reemployed. If they succeed, they are likely to be chosen by the next committee. If not, their reputations decline and they are soon out of business.

One analyst with experience in both the Canadian IAS program and JTPA programs in the United States described the two in this way:

> The services offered are about the same—counseling, assessment, job development and matching, job search skills training, referral to remedial or vocational education. But there are two big differences. First, in Canada there is one place where you can get everything; there's no mumbo-jumbo about different agencies where the workers can go for services. Second, there is the personal commitment of the committee members [in Canada's IAS system]. The worker has an ombudsman, who goes to other employers or trainers on the worker's behalf.

Funding Delays

Getting funds in time to set up a displaced worker project before the layoffs begin is often a difficult proposition. The two private consultants who reported to OTA said that, in their experiences, significant delays in obtaining Title III funds occurred more than half of the time—and this estimate probably understates the problem, because these consultants worked for big companies that usually paid the early-stage costs of establishing displaced worker centers.[76] A human resources manager of a firm employing about 5,500 people told the workshop that more than a year passed from the time his company started a project until the time it received Title III funds. The difficulties, he said, are not so great with large companies; they have the money to start a project. His own company advanced $1.5 million for its project serving more than 1,000 displaced workers. But small companies have no upfront money.[77]

At least one State, Massachusetts, uses State-provided funds to start up projects. The Industrial Services Program can commit $10,000 to $15,000 for 45 days to help create a plant-based center, have it open the day layoffs begin, and operate it for a time while awaiting a Title III grant. But few other States with rapid response teams have State funds available that are dedicated to displaced worker projects. Typically, rapid response teams offer prelayoff services from existing agencies, such as the Employment Service, the Federal-State vocational and adult education programs, and local JTPA agencies. Most have no source of funds to draw on to help set up plant-based centers as soon as a company gives notice of a layoff. In fact, much of the team's effort goes into putting a funding package together.

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[76] Ibid.

[77] According to one experienced private consultant, small and midsize companies can make important contributions to getting adjustment services promptly for their displaced workers, even if they cannot provide startup funds for an adjustment center. They can make the essential contacts with Title III and other community agencies, speaking up for their workers and making sure they get attention.

Even if money is available for a 45-day startup period, as in Massachusetts, this is often not a long enough time to be sure that the project will get enough funding to last. As Title III programs mature and more States delegate money and decisions to local agencies, some of the delays in getting Title III grants are getting to be briefer; local agencies sometimes make funds available right away. Yet it is still not unusual to have a delay of 3 or 4 months from the time a JTPA agency commits to fund a project till it actually executes the grant.[78] Reasons for delay include revisions of the proposed project activities, time-consuming regulatory requirements, and bureaucratic holdups in getting the contract signed. Agencies may demand, for example, that a displaced worker center establish its own grievance procedures, or document its financial capability. In one case, a grant was held up when a State demanded that a firm provide a copy of its articles of incorporation.[79]

Three-quarters of the Federal Title III money appropriated by Congress is allocated to the States according to a formula in the law, based on the size of the State's work force and local unemployment rates. One-quarter is reserved for the Secretary of Labor to distribute at his discretion, to respond to such contingencies as mass layoffs or natural disasters, to ease the effects of relocating Federal Government facilities, or to give extra help to areas of high unemployment.

Projects are likely to run into the longest delays when they apply for a Federal discretionary grant. The proposal usually has to run the gauntlet of local, State, and Federal approval, and only then does the State start the process (sometimes with heavy bureaucratic encumbrance) of executing the grant. Even with efforts by the U.S. Department of Labor to reduce delays at the Federal level, the long decisionmaking chain makes fast action very difficult. One State official told the workshop that there is no way to get a Federal discretionary grant in less than 4 or 5 months—"it just doesn't happen"—and it can take much longer. The consultants' report to OTA said that months of delay could follow each stage, from local to Federal approval, and that even moderate delays at each stage results in several months of waiting. Meanwhile, even if the State has funds to commit, the uncertainty about whether Federal JTPA money will be granted makes it hard to plan the project, much less start giving service.

The cut in Title III funds for fiscal year 1986 could add to these difficulties (note that the JTPA program starts in July, 9 months after the fiscal year begins). Congress reduced Title III funding from $223 million in fiscal year 1985 to $100 million in 1986. The reason was that, nationwide, the Title III program had a large carryover of funds—$185 million as of June 30, 1985. There are big differences among States, however, in rates of spending and funds carried over. Some States got a slow start with this new program (initiated in October 1983), but others undertook an active program more quickly. The General Accounting Office found that, with the budget cut, 23 States would have less money for services to displaced workers in 1986 than was allocated to them in 1985.[80] Since the formula for allocating three-quarters of Title III money among the States is written in the law, changing the allocations would be difficult.

In making the budget cut, Congress indicated that it did not expect a reduction in levels of service to displaced workers. The conference report that approved funding for the program directed the Secretary of Labor to give first priority for discretionary funds to States that would otherwise have to cut back services, and to report on possible needs for added funds to maintain program levels. States that started an active program early, and had less carryover of funds, are now more dependent on Federal discretionary grants—and thus may be subject to greater delay in funding individual projects.

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[78] Balfe and Fedrau, op. cit., p. 8.

[79] Ibid.

[80] For further discussion of Title III funding, see U.S. Congress, Office of Technology Assessment, op. cit., pp. 186-189. See also U.S. Congress, House Committee on Education and Labor, Subcommittee on Employment Opportunities, Hearings on the Job Training Partnership Act, Title III, testimony of William J. Gainer, Associate Director, Human Resources Division, U.S. General Accounting Office, Nov. 8, 1985.

There is some evidence, too, that despite the law's provisions for flexible responses to unforeseen layoffs, workers in industries and areas that are hard hit may not be adequately served. For example, according to a local JTPA agency spokesman, about 800 workers in Santa Clara County, California, are getting Title III services in 1986. An official of the State Employment Development Department estimated roughly that half of those being served were displaced from the high-tech industries, and that about one-quarter of the 55,200 unemployed workers in Santa Clara County in February 1986 were displaced high-tech workers. On the basis of these estimates, approximately 1 in 35 displaced high-tech workers were getting JTPA-funded assistance.

In essence, the Santa Clara County JTPA official said that the county did not have the money to serve more—that it had already applied for, and received, as much extra money from the State as could be expected to serve workers from the distressed high-tech industries. This local agency counted high-tech workers as eligible for assistance only if they were displaced in plant closings. Yet thousands of workers lost their high-tech jobs in mass layoffs, not closings. The definition of displaced workers in the Job Training Partnership Act is broad, and allows States a great deal of leeway in applying the definition; it does not confine eligibility to workers displaced in plant closings, but includes others who are not likely to get their old jobs back. The reasoning of the Santa Clara County agency was that if the plant still existed, the workers might be recalled. However, research on what happened to 177,000 workers displaced from high-tech industries in California from 1979 to 1984 shows that only 24 percent of them were reemployed in those industries.[81] Thus, many high-tech workers who are in all likelihood permanently displaced from their old jobs are not getting retraining and reemployment help.

Knowledge About Government Programs

One problem with bringing services to displaced workers is that many people do not know the JTPA Title III program exists. In the GAO survey of establishments that had closed plants or laid off large numbers of workers in 1983 and 1984, 80 percent responded that they had not heard of the Title III program. (The law was passed in 1982, and State JTPA programs officially got underway in October 1983.) In the OTA-GAO workshop, a human resource manager from a large multinational firm said he had not known about the Title III program until a consultant he hired to help plan displaced worker services introduced him to it. There is no real effort, he said, to promote Title III services in the private sector. Another participant said that even the unions in his part of the country do not know about the Title III program—the information is not getting out. Likewise, human resource managers in the corporate headquarters of forest product companies said, in interviews with OTA staff, either that they did not know the program existed, or that they had barely heard of it.

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[81] Philip Shapira, "Industry and Jobs in Transition: A Study of Industrial Restructuring and Worker Displacement in California," unpublished doctoral dissertation, Department of City and Regional Planning, University of California, Berkeley, 1986, p. 7-27.

THE FOREIGN EXPERIENCE WITH ADVANCE NOTICE

Experience with advance notice in the United States is based almost entirely on notice offered voluntarily by employers or provided under agreements with unions. Five States do have advance notice laws on the books, but these laws are either voluntary, seldom enforced, or too recent in origin for evaluation data to be available. Thus it is instructive to look at the experience with advance notice requirements in other countries. A comprehensive look at this question is beyond the scope of this report; according to a 1980 International Labour Office (ILO) report, at least 38 countries have laws requiring employers to provide some form of advance notice of work force reductions or collective dismissals of workers.[82] Some of these programs are briefly discussed in appendix B; they differ greatly in scope and coverage. Countries that have advance notice laws also vary greatly; they include several developing countries of the Third World as well as many highly industrialized nations.

Of the different approaches used in various countries, the laws in Canada and Western Europe probably are most relevant to the U.S. debate about advance notice. Most Western European countries require notice so that adjustment services for workers can be planned, and also require consultation on alternatives for limiting or avoiding the dismissals. In Canada, several Provinces and the federal labor code (covering certain classes of workers) require advance notice, generally with fewer additional obligations than many Western European countries. However, some jurisdictions in Canada can require employers to cooperate in developing a program to eliminate the need for dismissals or to minimize the impact of dismissals on the workers.

Advance Notice and Rapid Response in Canada

In Canada, six Provinces and one territory have laws requiring advance notice of collective dismissals, and a notice requirement in the federal labor code covers about 6 percent of the Canadian work force. Elsewhere, notice is voluntary.[83] Altogether, about three-quarters of Canada's work force is covered by advance notice requirements for collective dismissals.

The advance notice requirements vary by jurisdiction. Employers covered by the federal code must notify the Minister of Labour 16 weeks before dismissing 50 or more employees who have worked 3 consecutive months or more. Temporary layoffs are not covered by the notice law.[84] Several Provinces with notice requirements—Manitoba, Newfoundland, Nova Scotia, Ontario, and Quebec—require at least 8 weeks' notice when 50 workers are to be dismissed, and 16 weeks when dismissals will affect 500 or more workers. Some of these Provinces require more than this; Quebec and Nova Scotia, for example, require 8 weeks' notice when as few as 10 workers are dismissed. The Yukon Territory requires 4 weeks' notice when 25 to 49 employees would be dismissed. A more limited notice requirement for group dismissals, applying only to workers under collective agreements, is in effect in New Brunswick.

In several Provinces, employers have the option of providing workers with payment in lieu of notice. These payments are separate from the mandatory severance pay required in some jurisdictions.

Both the Ontario law and the federal labor code require employers to provide severance pay to some workers losing their job in group dismissals. The Ontario law entitles workers employed by the firm for 5 or more years to 1 week's pay for each year of service, up to a maximum of 26 weeks' pay. The federal labor code entitles workers employed for at least 12 consecutive months to 2 days' severance pay for each year of service, but not less than 5 days' pay.

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[82] International Labour Office, *Termination of Employment at the Initiative of the Employer*, International Labour Conference, 67th sess., 1981, Report VIII(1) (Geneva: 1980). In the discussion below, OTA has used ILO's terms wherever possible to avoid confusion. "Work force reduction" refers to the dismissal or long-term layoff of workers because of economic, technological, or structural changes affecting an enterprise. The term "collective dismissal" is used to refer to special procedures governing the dismissal of more than one worker. Some countries also have special procedures governing the dismissal of individual workers.

[83] Individual notice requirements are also in effect in most Provinces and for workers covered by the federal labor code.

[84] Several kinds of layoffs are exempted. For example, notice is not required for layoffs of 3 months or less; for layoffs of more than 3 months if the employees are notified that they will be recalled within 6 months; for layoffs of 3 months or more if an employer continues payments on a pension or insurance plan, or if the employee receives supplementary unemployment benefits.

Advance notice in Canada is usually combined with rapid provision of services to workers affected by plant closings or mass layoffs. When government agencies receive notice of a closing or mass layoff, the Industrial Adjustment Service (IAS), a small federal agency, immediately steps in with its offer to help workers find new jobs. Providing technical and modest financial assistance, IAS helps to establish labor-management adjustment committees that try to place workers in new jobs as quickly as possible. IAS services are available throughout Canada, and usually begin well in advance of the layoffs or closings. In provinces that do not require notice, employers may volunteer information about impending layoffs or closings, or IAS may learn of them through news accounts or word of mouth.

The period of advance notice is sometimes used to look for ways to avoid dismissals or mitigate their effects. Employers under the jurisdiction of the federal labor code must set up joint planning committees, comprised of management and worker representatives, when they give notice of group dismissals. The committees are charged with devising an adjustment program to eliminate the need for the dismissals, or to minimize their impact on the workers and help them find other jobs. Once the adjustment program is developed, it is to be implemented by the employer in cooperation with the union or the redundant employees. In Manitoba, Ontario, and Quebec, employers can be required to undertake or cooperate in adjustment programs at the discretion of the Provincial labor minister.

Advance Notice and Consultation Laws in Western Europe

Notice laws in many Western European countries closely resemble each other. Most members of the European Community (EC) have complied with a 1975 directive from the EC governing council that called on member states to "approximate in law" some common requirements for notice and consultation with workers when undertaking collective dismissals.[85] Some non-EC members in Western Europe (such as Sweden) have more stringent advance notice requirements than is called for by the EC directive.

The threshold triggering notice requirements is quite low in most EC countries. For example, Denmark requires firms that employ 20 to 99 workers to give advance notice before dismissing 10 or more workers in a 30-day period. Danish firms employing 100 to 299 workers must comply if they plan to dismiss at least 10 percent of their workers over a 30-day period; firms with 300 or more workers must comply when at least 30 dismissals are proposed. The Danish approach is one of two options stated in the EC directive. The other requires notice when at least 20 workers would be dismissed over a period of 90 days, whatever the size of the firm's work force.

The EC model also requires employers to consult with the workers' representative "with a view to reaching an agreement" on the proposed dismissals. The directive specifies that the consultations are to cover ways to avoid the dismissals or reduce the number of workers affected by them, and ameliorate the consequences of the dismissals. The employer must supply "all relevant information," and give a written account of the reasons for the proposed dismissals, the number of workers to be dismissed, the number of workers ordinarily employed at the establishment, and the time period for the dismissals. In some countries, the period of formal notice to a government agency can be short. The EC directive requires only 30 days' formal notice.[86] However, the consultation process usually precedes the formal notice and it can be protracted. Some countries require far more notice than 30 days. In Sweden, for example, the notice period is 6 months for layoffs of more than 100 workers, and if there is disagreement between workers and managers, layoffs can be delayed until a Labour Court rules on how they are to take place. France is unusual in that the government can actually deny permission for the dismissals.

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[85] "Council Directive of 17 February 1975 on the Approximation of the Laws of the Member States Relating to Collective Redundancies," in the *Official Journal of the European Communities*, 75/129/EC No. L 48/29-30, Feb. 22, 1975. All 10 countries that were full members of the EC at the end of 1985 had responded to the Council Directive with legislation; however, the European Commission found the responses of three of these countries unsatisfactory. Two additional countries, Spain and Portugal, became full members of the EC in 1986.

Many Western European countries also require extensive consultation with worker representatives on business plans that might affect the work force. For example, in West Germany, an employer must disclose to the works council any proposed plans for changes in the organization that could lead to redundancies or otherwise disadvantage the work force. Also, West German employers must notify the regional employment agency of foreseeable changes over the next year that might lead to the dismissal of workers or downgrading of personnel. The opinion of the works council on the change is appended to the notice. The purpose of the notice, says one analyst, is to facilitate "long-range observation of labour market developments and to permit all parties concerned to take preparatory steps that would smooth the transition to new employment."[87]

Labor Market Flexibility and Collective Dismissal Laws in Western Europe

In most Western European countries, the laws calling for advance notice do not stand alone, but are part of more comprehensive programs governing the dismissal of workers. Other obligations placed on the employer may include consultation on alternatives to the collective dismissals or ways to minimize the impact of the dismissals, severance pay for those who do lose jobs in collective dismissals, and additional requirements applying to the dismissal of individual workers.

These legal requirements on individual and collective dismissals, as well as collective bargining agreements and social understandings, make it more difficult for Western European employers to dismiss workers than for employers in this country. In essence, the European approach emphasizes protection of employed workers when firms seek to change operations or to redefine or eliminate jobs. The European approach gives employed workers more employment stability than most American workers get; however, the requirements may also, in the long run, contribute to reduced labor mobility and thus hinder job creation. For example, employers may be more reluctant to hire new workers if they anticipate high costs in letting workers go later on. The lack of geographic mobility of labor in Europe, due to national boundaries and cultural values, also may be a factor.[88]

While it is plausible that the European policies on dismissals make employers more reluctant to hire, it is difficult to reach any overall conclusions about what this means in terms of the national employment trends of various countries. It is true, for example, that the United States has outperformed Western European countries in both aggregate job creation and the rate of job creation for over a decade; however, many different factors have contributed to this, including the demographic fact that the United States had the fastest growing work force. Until recently, unemployment in most of Europe was lower than in the United States; the West German and French unemployment rates were lower than the U.S. rate until 1984; until 1980 the unemployment rate was lower in the United Kingdom. In the past few years, the situation has reversed and unemployment rates are higher in most West European countries than in the United States.[89]

The difference between the Western European and American experience with job creation probably has many causes, including differences related to the structures of the various economies, industrial competitiveness, trade laws and agreements, and capital flows. While labor immobilities resulting from European labor laws probably hinder job creation in Europe, it is not clear how important a factor they are. Moreover, the relative importance of advance notice for collective dismissals, separate from other European labor laws and practices, is even less clear.

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[86] The government authority may be empowered to reduce or extend the notice period.

[87] Werner Sengenberger, "Federal Republic of Germany," *Work Force Reductions in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industralised Market Economy Countries*, Edward Yemin (ed.) (Geneva: International Labour Office, 1982), pp. 91-92.

[88] For a more detailed discussion of possible effects of both occupational and geographical mobility on job creation, see U.S. Congress, Office of Technology Assessment, op. cit., pp. 152-153.

[89] Employment trends in the United States and in Western European countries are discussed in Ibid., pp. 144-160.

Business representatives at the OTA-GAO workshop characterized the Western European laws governing collective dismissals as onerous and as a factor contributing to unemployment in the region. One business representative said that his company had closed facilities in Europe, had found it a very expensive proposition, and was reluctant to make additional investments there. Another business representative said that companies make investment decisions on the basis of many factors; their investment in countries with plant closing requirements does not imply that the requirements impose no burden.

Labor representatives countered that Europe had prospered for a long time under the programs governing collective dismissals, that the current economic difficulties in Europe were of recent origin, and that they reflect macroeconomic policies unrelated to advance notice requirements. Heavy U.S. investment in Europe and Canada continues despite the plant closing rules. One labor representative said that workers in the United States can in effect feel the backlash from plant closing costs in Europe. One multinational firm decided to close a plant in the United States, he said, because it would be less costly than shutting down its operations in Italy or Holland, which have plant closing requirements.

Some U.S. employers may view advance notice legislation proposed in this country as the first step toward a Western European-style plant closing program, one workshop participant told OTA staff after the session. Employers are concerned about losing the flexibility to make management decisions efficiently. The possibility that sooner or later other requirements (such as for consultation, severance pay, or payment of health benefits) could be added to notice requirements may be a principal reason for opposing any notice requirement.

According to a recent report from the International Organisation of Employers (IOE), many European employers apparently view the requirements governing dismissals of workers (both collective dismissals and individual dismissals) as burdensome. In a survey of European employer federations on the functioning of the labor market, IOE asked respondents to characterize obstacles to freedom to terminate employment in their countries. Responses to the IOE survey were received from 18 European members and from Canada and New Zealand. Six of the twenty respondents called obstacles to termination of employment "fundamental"; eight (including Canada) termed them "serious"; five found them minor or insignificant; one did not respond.

According to the employer federations, the chief obstacles to the freedom to terminate employment were "rigid legislation," "long and complex administrative formalities," certain privileges (such as seniority), union positions that were unsympathetic to the problems of the enterprises, and restrictive legal interpretations. Some countries also found serious obstacles in the need for administrative clearance before terminating employment, very high redundancy payments, "lack of flexibility to adapt size of staff in small enterprises," and "excessive formalities (such as excessive advance notice in certain cases of individual dismissals)."[90]

The question of whether the Western European countries have gone too far, or the United States not far enough, in protecting workers against the impacts of collective dismissals is part of a broader debate about labor market flexibility. A recent report to the Secretary General of the Organization for Economic Cooperation and Development put the matter this way:

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[90] José-Maria Lacasa Aso, "Obstacles to Freedom To Terminate Employment," paper reproduced in *Adapting the Labour Market: Restoring Enterprise Competitiveness in Europe, Responding to New Employee Expectations*, a debate among IOE European member federations on freedom of action of enterprises and freedom of choice of employees in today's and tomorrow's labor market (Oslo: International Organisation of Employers, September 1985).

> This then is the issue: both security and flexibility are desirable. When it comes to conditions of employment, the two are probably in conflict, though the evidence is not clear. For these reasons of value and of fact, it would be wrong to come down firmly on one side or the other. The practical question is how one can strike a balance between desirable job security and necessary labour market flexibility. The answer may well be different in different historical and institutional context, though a rising tide of economic development leading to increasing levels of employment would help in generating confidence that flexibility is a desirable feature of any labour market policy.[91]

U.S.-Based Companies in Canada: The Forest Products Industry

Canada's laws on group dismissals generally put fewer obligations on employers than the laws of Western European countries, but more than those of the United States. Mainly, the obligation consists of advance notice, with the addition of severance pay under the Ontario and federal laws. Also, as noted above, the federal law and a few Provincial laws contain provisions for planning to avoid or mitigate work force reductions. No one has surveyed any large number of U.S.-based companies operating in Canada to see if the advance notice requirements are considered onerous, or if they figure in decisions to invest or locate in Canada. However, the little evidence that is available suggests that advance notice is not an issue for these U.S.-based firms.

An OTA case study of three U.S. forest products companies with branches in Canada found that the Canadian subsidiaries seem to accept quite readily the laws and customs of the country relating to group dismissals.[92] One, operating in Ontario, complies with the Provincial advance notice law with no mention of difficulties; in British Columbia, where advance notice is not legally required but appears to be customary for larger companies, the other two provide it. All three Canadian companies offer considerably more than the law requires in benefits to displaced workers. They seem to share common assumptions about what they owe workers displaced by structural or technological change.

In the United States, the parent companies differ markedly, both from their Canadian subsidiaries and from each other. All three strongly oppose any legal requirement for advance notice, and two of the three do not favor it as voluntary company policy; the other has a company policy of providing advance notice. Benefits vary a great deal from one company to the next. One is quite generous to salaried workers but gives hourly (union) workers only what local union contracts require, which is often very little. Another treats salaried and hourly workers much the same, providing benefits to both that are at least the equal of those offered in Canada. The third occupies a middle position. Whatever severance benefits and advance notice these companies provide generally go beyond legal requirements, since few such requirements exist in the United States.

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[91] *Labour Market Flexibility: Report by a High-Level Group of Experts to the Secretary-General* (Paris: Organisation for Economic Co-operation and Development, 1986), p. 11.

[92] In the spring of 1986, OTA staff members interviewed officials of three U.S. forest products companies, at corporate headquarters of the companies in the United States, and at offices or plants of subsidiaries of the same firms in Canada. All the firms had experienced plant closings or permanent reductions in work force in the past 3 years, in both U.S. and Canadian facilities. Company officials were asked about their firms' policy and practice in plant closures and permanent layoffs, and in particular about advance notice and company-provided services and benefits to the displaced workers. They were also asked about government services to displaced workers—what was offered and how worthwhile it proved to be. The companies that cooperated with OTA in this project were Boise Cascade Corp., at its corporate headquarters in Boise, ID, and at the Kenora, Ontario pulp and paper mill operated by Boise Cascade's Canadian subsidiary; the Champion International Corp., at corporate headquarters in Stamford, CT, and at the Vancouver, B.C. office of Weldwood, a Champion subsidiary; and the Weyerhaeuser Co., at corporate headquarters in Tacoma, WA, and at the Vancouver, B.C. office of its subsidiary, Weyerhaeuser Canada. Officials interviewed included corporate vice-presidents; corporate and division human resource managers; and the manager and human resource director and staff of a plant.

Advance Notice

In Canada, advance notice of plant closings and mass layoffs seems to be taken as a matter of course. According to a regional official of the federal Industrial Adjustment Service in British Columbia (where advance notice is not legally required), there are sometimes unannounced "Friday night closings" of sawmills. But when this happens, it usually involves a smaller firm operating in only one location; companies with other plants that are still in business "have to be more aware of the good will factor."

All three Canadian subsidiaries of the U.S. forest products firms included in the OTA case study give 2 to 6 months' advance notice. None has had difficulties with workers as a result of advance notice, and one company noted that productivity and safety both improved after notice of a permanent layoff. None of the firms lost credit or customers after giving advance notice of a closing. One company spokesman mentioned, however, that makers of specialty products might lose customers after giving notice (his own firm is a producer of standard commodities such as plywood), and that smaller firms might find their lines of credit from suppliers restricted.

Spokesmen at one Canadian company said that notice was useful in bringing home the reality of a work force reduction; this company planned for layoffs and gave notice, but has been able to avoid dismissing anyone involuntarily during the reduction. At another company, an official said that notice was probably most helpful to individual workers in making financial decisions, but less so in helping workers get new jobs (this was in Vancouver, however, where unemployment was at 12 percent). This official said that laws requiring advance notice or adjustment services to displaced workers are not what makes the effort succeed. What counts, he said, is the company's commitment—"the willingness to accept that we owe these people something." The spokesman at a third Canadian company saw advance notice as an asset in employee relations. Any company that tries to treat its employees well, he said, will earn better regard from its workers. "Also," he said, "we have our own set of values" for fair treatment of employees.

At U.S. corporate headquarters of this third firm, officials said that a companywide policy for advance notice is "impossible" because every plant is different and closings cannot always be anticipated. The U.S. company does have a policy of giving at least 1 month's advance notice to salaried workers, and usually gives 2 months, during which employees are free to hunt for jobs. For unionized hourly workers, advance notice and severance benefits are provided only as required by collective bargaining contracts, plant-by-plant. Some of the local contracts require severance pay, but none require advance notice. This company considers advance notice an economic issue, to be bargained for like wages, work rules, and severance benefits. According to the spokesmen, the company shares information with hourly workers on the competitive and profit situation of each plant—for example, that a plant down the road is paying wages of $6 per hour. Communication, said the spokesmen, serves the same purpose as advance notice, which is to spare workers surprise. "It should not be a surprise in any mill we shut down in the west that we're losing money," said one official.

At the U.S. headquarters of another company, officials said that advance notice makes no economic sense, for two reasons: 1) the company often waits for year-end financial information to make decisions about closing, and once the information is in, there is no point in delay; and 2) when you give advance notice, you accelerate the conditions that led to the decision (e.g., loss of customers). The company has no policy prohibiting advance notice, but in about 80 percent of the cases does not give it. This firm looks at severance pay and advance notice as interchangeable, and favors severance pay.

The third U.S. company, facing several plant closings in the West, adopted a corporate guideline of 90 days' advance notice; there is some deviation, but this is the recommended minimum. Despite some apprehension that workers who were still needed might leave before the closing, this turned out not to be a major problem. Nor did the company have any difficulty with lowered morale, or with loss of credit or customers. A spokesman for this firm had mixed feelings about the usefulness of advance notice. Clearly, he said, companies should provide a reasonable amount—"Friday night closings are obviously horrendous." However, there seemed to him little difference between 6 weeks' and 6 months' notice, so far as providing reemployment services to workers was concerned. Where the plant was the sole economic support of the community, no amount of notice seemed to help. This man, like all the company spokesmen at U.S. corporate headquarters, opposed plant closing legislation. "I'm philosophically opposed to this kind of law," he said. "Ethical values cannot be legislated."[93]

Benefits and Services to Workers

Like advance notice, severance benefits and adjustment services for displaced workers are seen as a company obligation by the U.S.-based firms in Canada. All three offer early retirement and generous severance pay in addition to notice to workers slated for layoff. Two of the three have saved slots in other plants for their laid-off workers. All have staved off displacement by using workers who are either laid off or on notice of layoff as vacation relief workers; in some cases, attrition opens up permanent jobs for these workers. However, turnover in the forest products industry in western Canada is now near zero, and productivity is rising, so that attrition may be very slow.

Two of the Canadian companies expressed pride in their own records with displaced workers compared with that of other companies. One man contrasted his firm's practice of saving jobs at its other plants for displaced workers with companies which, he said, simply start over and hire the highest caliber worker they can find. Another said: "Our company has spent twice as much on our displaced workers as others in the Province. Some companies just say goodbye."

The third company made a formal agreement with the Canadian Government to relocate, retrain, voluntarily retire, and otherwise ease the impacts on workers facing displacement as a result of plant modernization. No worker has been laid off involuntarily at this plant in the 2 years since modernization began, and it is hoped that none will be. So far, about 200 of 870 jobs in the plant have been eliminated, but early retirement, attrition, and the use of surplus workers as vacation replacements have all helped to avert forced layoffs.

In the United States, the practices of the three companies varied widely. The company that distinguishes between salaried and hourly employees offers its displaced salaried workers severance pay, extended health benefits, early retirement, and placement assistance, in addition to advance notice. Severance benefits for hourly displaced workers are restricted to what local union contracts require. Some call for severance pay, many do not. In a few cases, this company has voluntarily offered job search workshops to hourly employees.

A second U.S. company has negotiated substantial severance payments for most employees displaced in plant closings, and considers this a substitute for advance notice. The company has also offered some of its displaced workers transfers to jobs in other plants, and on occasion has worked with public agencies to provide job search assistance. An early retirement plan is available only to salaried employees.

The third company, applying what it calls a "corporate philosophy of fair and thoughtful treatment" for all its employees, salaried and hourly, offers a broader range of benefits and services. Besides giving advance notice, this company has provided generous severance payments (up to 1 year's pay), an early retirement option, hiring preference for jobs at other plants, financial and personal counseling, and an energetic job search assistance program, including newspaper ads soliciting jobs for its "good employees" and a labor exchange with a free long-distance number.[94]

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[93] See the section entitled "Costs and Benefits of Advance Notice" for further discussion of these issues from the point of view of companies, displaced workers, and service providers.

Government Assistance to Displaced Workers

Government assistance was a consistent, if sometimes inconspicuous, feature of the Canadian companies' plant closing and layoff experience. The companies tended to give only mediocre marks to "government help" as such; yet detailed discussion revealed that they set a high value on some aspects of the work done by the Industrial Adjustment Service (without always fully realizing the role the government had played). For example, one company, after downplaying the government role, praised the independent chairman of the labor-management adjustment committee formed under IAS auspices, and remarked that workers could trust that their interests were being looked after, since a neutral chairman was in charge. Also, the labor management adjustment committee in one of this company's plant closings discovered a large number of job openings at a new plant in the Province.

In the United States, at least at corporate headquarters, there was little awareness of the services that JTPA Title III programs could offer. One corporate human resources manager had never heard of JTPA Title III, but did know of a plant closing in which the plant manager had enlisted help from the State (probably a Title III agency). At another corporate headquarters, there was little more awareness of this federally authorized and funded program. Officials knew of one plant in which a manager had arranged to get worker adjustment services from the State.[95]

In many ways, U.S. forest products companies and their Canadian subsidiaries face the same economic situation, problems, and opportunities, but there are differences. Both are pressed by oversupply in wood products and increasing international competition in pulp and paper. Both are benefiting from the strong revival of construction in the United States. The U.S. firms, however, have had to contend with the strong U.S. dollar vis-a-vis the Canadian. These companies have closed more plants in the United States in the past few years, with greater loss of jobs, than in Canada.

Overall, the differences in company outlook and practice regarding plant closings in the two countries are uneven, but large. Canadian subsidiaries of the U.S. firms seem to live easily with Canadian laws and customs that favor advance notice of plant closings. Their policies for services and benefits to displaced workers reflect the attitude that "we owe these people something." Among the same companies in the United States, advance notice as a company policy is considered impossible by one, potentially harmful by another, and ethical and fair by the third. All are against a legal requirement. On employer-provided benefits, one regards services to unionized displaced workers as economic issues subject to bargaining; another substitutes severance pay for advance notice; the third tempers economic considerations with "fair treatment" and "ethical values."

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[94] See the section entitled "Responses to Advance Notice" for further discussion of employer-provided benefits and services.

[95] For further discussion of government responses to plant closings, see the section entitled "Responses to Advance Notice".

ADVANCE NOTICE PROGRAMS AND PROPOSALS IN THE UNITED STATES

Advance notice legislation has been proposed in at least 20 States over the years. At least five States have legislative provisions calling for advance notice (either voluntary or mandatory.) Aside from advance notice, several States have other laws related to plant closings: some require continuation of health insurance coverage for workers after layoffs or closings; although this is usually offered at the employees' expense, one State (Connecticut) requires the employer to pay for continued health insurance benefits for workers affected by certain plant closings or relocations. Several States offer technical and financial assistance to aid employees in buying plants that are closing. Some States also provide assistance to troubled firms to help them stay in business, and thus avoid shutting down or laying off people. Finally, a number of State legislatures have authorized special studies or commissions on plant closing issues.

At the Federal level, bills calling for advance notice of plant closings or large layoffs have been introduced in every Congress since 1973. Aside from a purely voluntary notice provision in the Trade Act of 1974, no legislation for advance notice has ever been enacted, and only one bill has ever been considered on the floor of either House. This bill, H.R. 1616 in the 99th Congress, was defeated in the House in November 1985 by a vote of 208 to 203.

Existing State advance notice laws, and Federal proposals and activities related to advance notice are discussed briefly below. Readers interested in more detail about the State and local programs can find it in appendix B.

State and Local Programs

States with laws calling for advance notice include Maine, Wisconsin, Massachusetts, Michigan, and Maryland. The Maine and Wisconsin laws require firms to provide notice, although penalties for not complying are modest. The Massachusetts notice law is voluntary, although firms receiving certain kinds of State or State-backed financial assistance are to accept its terms. The Michigan and Maryland programs are entirely voluntary.

Maine and Wisconsin have required advance notice for more than a decade. The Maine program requires firms to provide 60 days' notice *and* severance pay when closing or relocating covered facilities employing 100 or more people. Wisconsin requires 60 days' advance notice when a firm employing at least 100 or more workers within the State plans a merger, liquidation, disposition, or relocation that would cause a cessation of business activities affecting 10 or more people. Penalties for not complying with the two laws are modest: the most a firm can be fined in Maine is $500; in Wisconsin, the maximum fine is $50 per affected employee.

Under the Massachusetts mature industries legislation, adopted in 1984, all firms are urged to adopt a voluntary standard for corporate behavior on advance notice. Some firms (those applying for financial aid from certain agencies) must agree to accept the standard as a condition for aid. This requirement is quite flexible, however: in accepting the "social compact," employers agree to make "a good faith effort" to provide employees with the "maximum practicable combination" of advance notice and maintenance of income and health insurance benefits. The law does not state a minimum notice standard, but does say that the State "expects" firms to provide "at least 90 days' notice or equivalent benefits." The law also calls on companies to help reemploy the workers. An evaluation of the program is in progress.

Maryland's law, passed in 1985, established a quick response program and also called for voluntary guidelines to employers who are reducing operations. The law and the guidelines (issued in June 1986) urge at least 90 days' notice when possible and appropriate, and continuation of benefits; the guidelines also identify contact points for State assistance. The voluntary advance notice in Michigan law has not been actively implemented, and it appears that the State has hardly ever been officially given notice of a closing.

A few localities have advance notice ordinances. A Philadelphia ordinance, adopted in 1982, requires firms to provide 60 days' notice when closing down or moving to a location beyond commuting distance from the city. Vacaville, California, adopted an ordinance in 1984 that requires firms relocating to a special redevelopment area who apply for certain local development assistance to agree to provide at least 3 months' advance notice, if possible. The ordinance will expire in January 1987 unless extended.

Existing and Proposed Federal Programs

Trade Act of 1974

Section 283 of the Trade Act urges firms moving facilities to foreign countries to provide 60 days' notice. Specifically, the section says:

> Before moving productive facilities from the United States to a foreign country, every firm should:
>
> (1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and
>
> (2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the day it notified employees under paragraph (1).[96]

The law goes on to state that it is the "sense of the Congress" that such firms should: 1) apply for and use adjustment asssistance; 2) offer employment opportunities (if any exist) to its employees who are affected by the move; and 3) "assist" in relocating employees to other areas in the United States where employment opportunities exist.

The voluntary notice provisions in Section 283 have not been widely publicized. Officials at the Department of Labor told OTA that they were not aware of any firms moving abroad that first gave formal notice to the Department. It is not known how many of these firms have given notice to their employees.

Data on Plant Closings and Permanent Layoffs

Section 462(e) of the Job Training Partnership Act calls on the Secretary of Labor to develop and maintain statistical data on plant closings and permanent layoffs. Specific kinds of information to be collected include data on the number of closings, the number of workers displaced, the location of affected industries, and the types of industries involved.

The Bureau of Labor Statistics is in the process of establishing a plant closing databank, through contracts with State employment agencies. Participating States will review initial claims for unemployment insurance (UI) to identify cases where 50 or more claims are filed from employees at a single firm over a 3-week period. The State will then call the firm to verify whether a layoff or closing has occurred and the reasons for the closing. When a closing or layoff is verified, UI claims data will be used to track the status of these workers through the duration of UI benefits.

The law calls for publication of a report on plant closings each year. However, progress in establishing the databank has been slow, reflecting delays in funding for the program, and no report has been issued to date. In fiscal year 1984, Congress appropriated $1 million for an initial program to develop plant closing information based on unemployment insurance data from eight States. In fiscal year 1985, Congress appropriated $5 million for extension of the program to all States; the Administration proposed a rescission of this money, but Congress did not act on the proposal. For fiscal year 1986, $4,785,000 was made available for the plant closing data program, a figure that reflects the Gramm-Rudman-Hollings reduction. It is expected that an initial report covering plant closings and layoffs in 12 States from January to December 1986 will be issued in the spring of 1987. A nationwide study, covering most States, is not expected until sometime in fiscal year 1988.

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[96] 19 U.S.C. 2394 (Public Law 93-618, Title II, Section 283)

Secretary's Commission on Plant Closings

Secretary of Labor William Brock appointed a Task Force on Economic Adjustment and Worker Dislocation in October 1985. The 21-member task force is to report back to the Secretary in December 1986. The Task Force has established subcommittees in four areas—the nature and identification of the problem, public policy responses, private responses, and the foreign experience.

Legislative Proposals

Legislation calling for some form of prenotification or advance notice of plant closings has been proposed in every Congress since 1973, but it was not until 1985, in the 99th Congress, that a bill was reported out of a full committee of either House. The House Committee on Education and Labor reported H.R. 1616 in October 1985. After significant revisions were made on the House floor, the bill was defeated by a vote of 203 to 208 on November 21, 1985.[97]

The version of H.R. 1616 that was reported out of the Education and Labor Committee would have required employers of 50 or more people to provide 90 days' written notice before ordering plant closings or mass layoffs that would result in an employment loss for 50 or more employees at any site during any 30-day period. An employer could proceed with the layoff or closing before the end of the 90-day period in the case of "unavoidable" business circumstances.

The version of the bill that came to a final House vote on November 21, 1985, after amendment on the House floor, would also have required 90 days' notice, but in fewer circumstances than the committee-reported bill.[98] For example, the definition of an employer falling under the bill's coverage was narrowed to include 50 or more full-time employees (or 50 or more employees working a total of 2,000 hours a week without overtime) "at a single site." These employers would be required to provide 90 days' notice of plant closings or mass layoffs involving an employment loss of: 1) either 30 percent of the employees or 50 employees (whichever number was greater) of any employer at any site during any 30-day period; or 2) 100 or more employees at any site during a 30-day period. Employers could order the plant closing or layoff before the end of the 90-day period as a consequence of "unforeseeable" business circumstances.

The committee-reported version of H.R. 1616 also contained consultation provisions that were deleted on the House floor. In this version, the bill would have required employers to consult "in good faith" with an employee representative (if one existed) for the "purpose of agreeing to a mutually satisfactory alternative to or modification" of a proposed plant closing or layoff. "Good faith" consultation would include providing the employee representative with relevant information needed to thoroughly evaluate the proposed plant closing or layoff or to evaluate the alternatives or modifications.[99]

The committee-reported version of the bill also proposed to give the Labor Department a direct role in enforcement, requiring the Secretary of Labor to investigate complaints that an employer had violated the notice and consultation provisions of the bill. On finding that the allegations had merit, the Secretary would then petition a U.S. District Court for injunctive relief. The court could have ordered several forms of relief, such as requiring the employer to give notice, extending the consultation period beyond 90 days, and requiring reinstatement with back pay and benefits. The version of the bill voted on by the House did not contain provisions for injunctive action.

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[97] As originally introduced, H.R. 1616 was entitled the "Labor-Management Notification and Consultation Act of 1985"; the version of H.R. 1616 that was voted down by the House was entitled the "Community and Dislocated Worker Notification Act."

[98] For the debate on the bill, see the *Congressional Record*, Nov. 12, 1985, pp. H9992-H10008; Nov. 14, 1985, pp. H10213-H0242; Nov. 21, 1985, pp. H104665-H10487.

[99] For a discussion of objections of employers to these requirements, see the earlier sections entitled "Avoiding Plant Closings and Layoffs" and "Labor Market Flexibility and Collective Dismissal Laws in Western Europe."

Both versions of the bill specified that employees could sue noncomplying employers for back pay and related benefits for each day of violation, up to 90 days. Employees or other persons could seek to enforce this liability by bringing suit in a U.S. District Court. The courts also could award reasonable attorneys' fees to be paid by the defendant, together with the costs of the action. The committee's version of the bill would have allowed the courts to award both general and punitive damages, if it found such an award appropriate. This provision for punitive damages was deleted from the version of the bill voted on by the House. Also, the final version specified that the bill's procedures for taking civil actions against employers would be the exclusive remedies for violations of the bill.

ISSUES IN THE DEBATE ABOUT ADVANCE NOTICE LEGISLATION

Whether the Federal Government should require employers to provide advance notice of plant closings and large layoffs has been a persistent and controversial issue in Congress. In the 13 years since legislation on the subject was first proposed, positions on the part of management and labor have remained highly polarized. (The benefits and costs of advance notice are discussed in detail in an earlier section of this report.)

Nothing said at the OTA-GAO workshop suggests any softening of these polarized positions. Industry spokesmen, including some from companies that give substantial notice when closing plants or laying off employees, were united in opposing Federal notice legislation; labor union representatives were just as solidly in favor.

Is there any common ground? Despite appearances, there may be. All sides did agree on the need to provide adjustment services to workers displaced in plant closings and layoffs more promptly and more effectively. Although the business representatives at the workshop opposed mandatory advance notice, most agreed that voluntary advance notice was generally desirable. They did think that the value of notice was overemphasized; more important was provision of high-quality adjustment services to the workers—something that notice could facilitate but not guarantee. Labor representatives, while insistent that notice should be required by national policy, also emphasized the importance of adjustment services.

The discussion below examines several issues in the debate about advance notice from the perspective of improving adjustment services to workers displaced by plant closings or permanent layoffs. Some of the options discussed would not necessarily have to be linked with a requirement for notice, while others clearly would.

Rapid Response and Prelayoff Assistance

Advance notice provides the opportunity to set up a project for serving displaced workers before the plant closes or the layoffs begin.[100] Such projects may be located at the plant site, and involve the active participation of both management and labor. Job Training Partnership Act Title III funds can be used for projects of this sort. Several States have rapid response teams that bring information services to the affected workers when warning is given of a plant closing. At present, however, it is unusual to find worker adjustment projects fully established in plants before layoffs begin.

Obviously, advance notice is a prerequisite for prelayoff assistance. However, many improvements could be made in rapid response delivery systems whether or not a *legislative* requirement for advance notice is in effect. Legislative options for encouraging rapid response could be pursued either in conjunction with, or independently of, the issue of mandatory notice.

Outreach

As discussed previously, many employers are not aware that the Title III program exists, much less that it can be used for in-plant prelayoff assistance to workers who have received a notice of termination or layoff. Greater effort by governments (local, State, and Federal) to get the word out to employers and workers about Title III assistance would help. With more aggressive outreach, more employers might be encouraged to provide advance notice and to participate in prelayoff assistance projects. Improved outreach would not ncessarily require new legislative authority, and the direct costs would be modest. However, if the outreach succeeds—that is, attracts more people to JTPA Title III projects—then more funding would be required. At present, some States say they do not emphasize outreach because they do not have the funds to provide services if more people are attracted to Title III projects.

Active involvement of trade associations, business groups, unions, and others in the private sector can be a key factor in making outreach succeed. For example, in Massachusetts, some business and trade associations are publicizing the State's "social compact" to their members, and urging them to adopt voluntary, internal corporate policies to provide advance notice and services to displaced workers, insofar as possible.

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[100] See the section entitled "Benefits, and Relation to Worker Adjustment Programs" for a discussion of the advantages of such projects.

At the national level, business leaders established the National Center for Occupational Readjustment (NaCOR) in 1983. This nonprofit clearinghouse collects and disseminates information about ways to ease the effects of shutdowns. The Department of Labor helped provide initial support for NaCOR through a JTPA demonstration grant; NaCOR is now entirely supported by private sources.[101] Other national business organizations, including the Business Roundtable and the National Association of Manufacturers, have issued reports or model guidelines for corporate practices on plant closings. The U.S. Department of Labor's Division of Cooperative Labor-Management Programs, a modestly funded agency set up to encourage joint efforts by employers and employees, has been active in distributing information about the best practices to follow in plant closings. Some State officials of Title III programs say they would welcome additional advice and technical assistance from the U.S. Department of Labor on how best to manage rapid response to plant closings and layoffs.

Improving Rapid Response

Lack of information about prelayoff assistance is not the only impediment to rapid response. As discussed earlier, some efforts to establish displaced worker projects in plants before layoffs have encountered delays in funding, lack of technical assistance, and problems in coordinating assistance from multiple agencies.

Government agencies, employers, and worker representatives have all shown a strong interest in expediting the delivery of adjustment services to workers affected by plant closings and large layoffs. Rapid response teams, made up of several State government officials who visit plants to acquaint workers with available services, is an option that several States now use. Another option is for employers to bring private consultants into plants to advise them on how to set up and operate an in-plant project.

Another approach that is generating a great deal of interest in the United States is that used by the Canadian Industrial Adjustment Services (IAS) for over 20 years. As soon as it receives word that a plant may close or layoff workers, IAS offers to help establish a labor-management adjustment committee in the plant to direct prelayoff assistance. An IAS approach might encourage employers to provide more notice of layoffs and closings voluntarily, since they could be reasonably sure of getting effective help once notice was given. In Canada, IAS operates in Provinces that do not have advance notice requirements as well as those that do, and apparently elicits a good deal of cooperation from employers.

If the IAS approach were adopted in this country, it might be necessary to establish a small consultative agency—either at the Federal level or in the individual States—that specializes in helping to set up in-plant labor-management committees. How this approach could work in the United States may be more clearly understood in a year or so. The Department of Labor is planning to fund several State demonstration projects, using the IAS model. Six States are expected to receive small discretionary grants (about $20,000 per State), which each will use to fund two in-plant demonstration projects. The plan is to establish in-plant labor-management committees, each with an independent chairman and a State official as a staff consultant. Most of the projects probably will take place where companies have provided substantial advance notice. The National Governors' Association, which is helping to direct the pilot projects, is expected to make a report on them.

A particularly difficult problem for States that wish to emphasize rapid response is delays in funding projects and services under Title III of JTPA. Displaced worker projects often encounter delays of several months between the time JTPA agencies initially commit to projects and the time grants are executed.

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[101] Part of the Department of Labor grant was used by NaCOR to produce a detailed employer's guidebook on approaches for softening the impact of plant closings. See *Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook*, Richard P. Swigart (ed.) (Washington, DC: National Center on Occupational Readjustment, 1984).

There may be several ways to expedite funding for displaced worker projects. Other States might follow the example of the Massachusetts Industrial Services Program, which can immediately commit State-provided funds to start up plant-based projects. Possibly, the Federal Government could help States improve rapid response by providing small grants for such startup activities, or encouraging them to use their Title III formula grants for that purpose.

As discussed earlier, a complex funding situation has arisen because of budget cutbacks for Title III in fiscal year 1986. Three-fourths of the Title III grants go to States on the basis of a statutory formula; the other 25 percent is disbursed through the Secretary of Labor on a discretionary basis. Some States have substantial carryover funds from formula-based Title III grants from previous years; other States do not.

Rapid response capabilities might be increased if States were encouraged to earmark a portion of their Title III grant for this purpose; one option might be for the Secretary of Labor to reallocate some carryover funds among States for this purpose. Section 301(d) of JTPA gives the Secretary of Labor limited authority to reallot State funds, on determining that the State would not be able to obligate the funds within a year of receipt. However, it might be necessary for Congress to give the Secretary new authority specifically to reallocate funds for rapid response.

The States with little carryover funding can apply for discretionary grants from the Secretary of Labor. Yet, projects seeking Federal discretionary grants typically encounter even longer delays than in those funded by State-administered formula grants. Proposals for these Federal grants usually must clear local, State, and Federal approvals before the grant can be executed. States that depend more heavily on the discretionary fund may thus have the biggest problems in getting funds quickly. Ways to speed up the clearance process are clearly needed. This will become an especially urgent matter if, as the Reagan Administration has proposed for fiscal year 1987, all Title III funding is made through the Secretary's discretionary fund.

Legislative Questions About Advance Notice

Voluntary or Mandatory Notice

The fundamental question in the debate about advance notice is whether it should be voluntary or required by law. Business representatives, with few exceptions, have opposed any legal requirement for notice. At the OTA-GAO workshop, business spokesmen argued that each plant closing and layoff is unique, and that a mandated requirement for notice would be inflexible. For smaller businesses, one participant said, notice requirements might stifle the entrepreneurial spirit, making it unattractive to expand the firm by adding more employees.

Labor spokesmen strongly support mandatory advance notice. At the workshop, one argued that business had not done a good enough job with voluntary notice; while there might be exceptional cases when overriding reasons prevented giving notice, the exceptions should not dictate policy. Another participant said that agreements between companies and unions are not sufficient, since most employees are not covered by union agreements.

The options for Federal policy on advance notice lie along a continuum, ranging from no Federal action at all to a comprehensive national program such as those in Western Europe. Between these poles lie a variety of approaches, such as encouraging notice on a voluntary basis, or requiring notice by Federal law but imposing no requirements for consultation on alternatives to the layoffs, or requiring notice and consultation but no other obligations such as severance pay.

Incentives and Notice

Possibly, the Federal Government might offer incentives to firms to provide advance notice. Massachusetts is experimenting with this approach at the State level, through its social compact concept. With properly selected Federal incentives, more companies might be encouraged to provide notice, either voluntarily or as a condition for receiving assistance.

One possibility would be to get firms receiving certain kinds of financial assistance to agree to provide notice if they found it necessary in the future to close or to lay off employees. Massachusetts takes this approach. Firms applying for financial aid from certain financing authorities agree to accept a voluntary standard for corporate behavior; they pledge a good faith effort to provide a combination of notice and income and health benefits, where possible, in future layoffs or closings. A similar approach might be adapted for Federal or federally supported financing.

Another possible incentive would be to give companies that provide notice more favorable tax treatment in meeting obligations to the government than they would get otherwise. However, tax breaks for notice may be viewed as inappropriate, in light of concerns about Federal budget deficits and may be inconsistent with tax reform objectives. Moreover, it is not clear that tax breaks would automatically encourage more firms to provide notice; they might simply benefit firms that would have provided notice anyway.

Another possibility, as noted above, is that a greater Federal effort to encourage rapid response might in itself be an incentive for some companies to give more notice, particularly if accompanied by a concerted effort on the part of government and business organizations to acquaint companies with displaced worker assistance programs. In fact, some State Title III program directors have told the National Governors' Association that more employers are providing advance notice voluntarily as the Title III program becomes better known.

Size of Firms and Size of Layoffs

It is generally contended that small businesses have a harder time giving advance notice than large firms, and are less likely to give it. From a policy standpoint, this poses a dilemma: the firms most likely to be burdened by advance notice requirements are also those firms that are least likely to give it. From an administrative standpoint, small firms are also harder to track in monitoring compliance.

Some legislative proposals for advance notice have exempted small firms from notice requirements, with the number of the firm's employees defining the threshold for notice requirements to apply. Other proposals refer to the number of employees of a firm at a single establishment, or site. There is little agreement about the size of an enterprise or establishment to exempt from notice, as is suggested by the modifications made in H.R. 1616, the advance notice legislation that was defeated in the House in 1985. In the version of the bill that was reported out of the House Education and Labor Committee, only firms with fewer than 50 employees were excluded from the bill's coverage. The version of the bill that came to a final vote on the House floor excluded business enterprises employing fewer than 50 full-time workers at a single site from the requirements of the bill. Before defeating the measure, the House rejected a proposal to require notice only of firms that employed at least 200 full-time employees at a single site.

The argument for the 200-worker minimum was that large corporations with money, staff, and ability to plan ahead ought to give notice, but that a 50-worker minimum would burden small business. On the other side, it was argued that the 200-worker threshold would exclude the majority of closings or layoffs, so that much of the point of the legislation would be lost.

Another key question is how large a layoff or plant closing must be before triggering notice requirements. The committee-reported version of H.R. 1616 would have required employers to provide notice when dismissing or laying off 50 or more employees at a single site over a 30-day period. The version of the bill ultimately defeated by the House would have required notice of layoffs or closings affecting between 50 and 100 employees at a single site if 30 percent of the work force were involved, and notice for all closings or layoffs affecting more than 100 workers at a single site.

Threshold questions also arise in distinguishing between temporary, indefinite, and permanent layoffs. Temporary layoffs may occur for several reasons—closing down facilities while retooling, or while inventories are being reduced. Sometimes, however, unforeseen circumstances may turn a temporary layoff into a permanent one. Whether temporary or indefinite layoffs should be treated differently from permanent ones has become an issue. The committee-reported version of H.R. 1616 defined employment losses as an employment termination other than for cause, a layoff of indefinite duration, a layoff of more than 6 months, or a work reduction of more than 50 percent during any 6-month period. In the version of the bill finally voted on in the House, the last item (pertaining to 50-percent work reduction over a 6-month period) had been removed, but the other three items were kept. In Canada, the notice law that applies in the federal jurisdiction does not require employers to provide notice in layoffs lasting 3 months or less, or if employees are told they will be recalled within 6 months. Notice also is not required in layoffs of 3 months or more when the employer continues to make payments on a pension or insurance plan, or if the employee receives supplementary unemployment benefits.

How Much Notice?

Proposals have varied on the amount of notice to require, some calling for as much as 6 months' notice, and others for as little as 30 days. H.R. 1616 proposed 90 days' notice, except when unforeseeable business circumstances prevented completion of the notice period. Opponents of the 90-day notice period regard it as too inflexible, imposing a burdensome mandatory national standard on small and medium-size business. To some, a 60-day notice period —as required in Maine and Wisconsin—is more acceptable. Supporters of a 90-day notice requirement argue that the exception for unforeseeable business circumstances gives sufficient flexibility.

Both the purpose of notice and the institutional setting in which it occurs are relevant to the amount of notice that is desirable. Generally, 2 to 4 months is needed to put in place a comprehensive program of adjustment services for workers. The amount of notice needed depends in part on whether an effective institution (like IAS) is available. In exceptional circumstances, effective projects have been set up in just a few weeks; however, IAS generally finds that 2 to 4 months' notice, depending on the number of workers affected, is just about adequate to get a program of adjustment services launched.

Other Components of Plant Closing Legislation

Over the years, many legislative proposals on plant closings have included other components besides advance notice—for example, the consultation requirement that was in the initial version of H.R. 1616 (but deleted before the final vote on the bill in the House). Other proposals have called for mandatory severance pay for workers, continuing health insurance coverage at the company's expense, and transfer rights for workers to other facilities owned by the company. Like the narrower issue of advance notice, these additional components of plant closing bills have generally received support from labor representatives, but have been opposed by employers and business groups.

Information and Data Questions

The debate about advance notice legislation has been hampered by the absence of reliable national information on plant closings or large layoffs, and the amount of notice provided to workers. Nearly all estimates of plant closings have been based on anecdotes reported in the general or trade press, or on proxy business information that was not collected for the purpose of counting plant closings or layoffs and the number of workers involved. Even less information has been collected on the amount of advance notice given by U.S. firms. Depending on what sources are used, very different pictures emerge about the size of the plant closing problem.

The General Accounting Office's study of business closures and permanent layoffs among establishments with 100 or more employees provides the first national estimates of plant closings and layoffs based on verified business data and using statistically valid methods. The GAO report is not scheduled for repetition.

In 1982, Congress called on the Department of Labor to develop and maintain national data on plant closings and permanent layoffs, and to publish the data as soon as practicable at the end of the calendar year.[102] The Administration did not begin work on the project until Congress specifically appropriated funds for it and there have been delays in fund availability; a national report on this subject has not yet been issued. The project was not originally designed to collect data on advance notice, but this could be a valuable addition. States that collect data for the project contact firms to verify the unemployment insurance data that are used in estimating plant closings and layoffs; thus, adding questions on advance notice probably would not involve much extra spending.[103]

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[102] The plant closing and permanent layoff data is called for in Section 462(e) of the Job Training Partnership Act of 1982.

[103] As this report was prepared for publication in August 1986, the Office of Management and Budget had just approved a request to query some of the firms contacted by the States in the plant closing data project about advance notice. This one-time special study was requested by a subcommittee of Secretary Brock's Task Force on Economic Adjustment and Worker Dislocation. The survey will cover about 300 to 350 firms in 7 States that had plant closings or layoffs in the last two quarters of 1985. The firms will be asked whether they provided workers with advance notice (either general or specific), and, if so, how much. They will also be asked whether they notified a union, State or local government, or the press of major layoffs. Firms will also be asked if they established a labor-management committee to help workers adjust to the layoff or closing, and what kinds of services were provided to the workers by the firm. It is expected that the special study will be provided to the subcommittee in late 1986. It is not scheduled for repetition. The costs of the study will be absorbed by the agencies so that no special funding will be involved. The Labor Department estimated that these costs will amount to approximately $62,850; this includes about $30,000 in absorbed costs by the Federal Government, $27,300 by the States, and $5,550 by private industry (assuming that each of the firms would need to expend 1 hour of staff time to answer the questions).

APPENDIX A: ADVANCE NOTICE LAWS IN OTHER COUNTRIES

Many countries now have legislative requirements for advance notice of plant closings and mass layoffs. A 1980 International Labour Office (ILO) report identified at least 38 countries with laws requiring employers to provide some form of advance notice of work force reductions or collective dismissals of workers.[104]

Advance notice laws are particularly common in Western Europe. Most members of the European Community (EC) have complied with a 1975 directive from the EC governing council that called on member states to "approximate in law" some common requirements for notice and consultation with workers when undertaking collective dismissals.[105] Many non-EC members in Western Europe also have adopted advance notice requirements, and in some cases these go beyond the EC directive.

In North America, advance notice laws are in effect in several Canadian Provinces, and for employers under the jurisdiction of the Canadian federal government; Mexico has procedures for government review of collective dismissals of employees. A number of African and Asian countries require advance notice or government review of the decision to dismiss workers.

Besides special provisions that apply to collective dismissals, many countries also have laws requiring employers to give notice before dismissing individual employees. In some countries, the requirements for individuals also apply in work force reductions or collective dismissals. Japan, for example, requires employers to provide 30 days' notice before dismissing workers except in cases of inevitable cause (such as a natural calamity) or when the worker is to blame for the dismissal.[106] The discussion below focuses on laws specifically related to collective dismissals.

The Mechanics of the Advance Notice Process

A wide range of approaches is apparent in different countries' programs related to work force reductions. Some require only that employers provide advance notice to the employees, an employee representative, or a government agency. In other countries, the employer must consult, and in some cases negotiate, with the employee representative before making a final decision to dismiss the workers. Several countries, mostly in the developing world, require employers to request approval from a government agency before going ahead with the dismissals.

Notice provisions may be tied to other requirements as well. In some countries, for example, employers must consider measures to minimize the dismissals (e.g., by retraining workers for different jobs within the firm, or relocating workers to different branches of the firm); some require employers to give severance pay to dismissed workers.

The discussion that follows is based mainly on advance notice requirements in several Western European countries and Canada. In many of these countries, advance notice is only one part of a package of adjustment services available to displaced workers and their communities. These adjustment services, and economic development programs as well, are an important part of the context in which notice takes place. This discussion is confined mostly to advance notice, and its relationship to prompt delivery of services to workers, but does not extend to the broader context of economic development or community adjustment programs.

Notice or Consultation With Employees

The ILO study identified at least 19 countries that required employers to provide advance notice to employees, either directly or through an employee representative such as a union.[107] Notice requirements differ greatly among countries; they may also vary according to the purpose of notice, the size of the company, and the number of workers to be dismissed.

Consultation provisions are common in many Western European countries. In France, West Germany, and Ireland, for example, employers must provide information and consult with a works council or an employee representative about avoiding or reducing the number of dismissals, and mitigating the impact of the dismissals. In the United Kingdom, employers must consider the views of the trade union or other employee representative, and give reasons if they do not act on these views.

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[104] International Labour Office, *Termination of Employment at the Initiative of the Employer*, International Labour Conference, 67th sess., 1981, Report VIII(1) (Geneva: 1980). In the discussion below, OTA has used ILO's terms wherever possible to avoid confusion. "Work force reduction" refers to the dismissal or long-term layoff of workers because of economic, technological or structural changes affecting an enterprise. The term "collective dismissal" is used to refer to special procedures governing the dismissal of more than one worker. Some countries also have special procedures governing the dismissal of individual workers.

[105] "Council Directive of 17 February 1975 on the Approximation of the Laws of the Member States Relating to Collective Redundancies," *Official Journal of the European Communities*, 75/129/EC No. L 48/29-30, Feb. 22, 1975.

[106] Tadashi A. Hanami, "Japan," *Workforce Reduction in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industralized Market Economy Countries*, Edward Yemin (ed.) (Geneva: International Labour Office, 1982), p. 181. In addition, Japan has several laws designed to protect workers in certain depressed industries from redundancy, or to facilitate their adjustment to new employment. For a discussion, see Ibid., pp. 168-169, and T.A. Hanami, "Japan," *International Encyclopedia for Labour Law and Industrial Relations* (The Netherlands: Kluwer Law and Taxation Publishers, 1985 supplement).

[107] International Labour Office, op. cit., p. 74.

In a few countries, the consultation process may lead to negotiations between the employer and employee representatives. In Sweden, for example, an employer cannot dismiss the workers until after the union is given the opportunity to negotiate. If an acceptable outcome to the two parties still is not reached, a labor court must rule before dismissals can be carried out.

Notice to Government Agencies

ILO reported in 1980 that some 33 countries had laws requiring employers to notify a government agency in advance of collective dismissals of workers. In some countries, notice to the government agency follows or is concurrent with notice to the employees or the workers' representative, while in other countries the employer is required only to notify the government.

Often, the purpose of notifying the government agency is not explicitly stated in the law, but several purposes may be deduced. In some cases, the main purpose is to allow the government time to plan and mobilize assistance for workers and communities. In others, the advance notice also gives the government a chance to consult with the employer or employees' representative about the dismissal decision. In some countries, a government agency can delay the impending dismissals for a specified period of time; and in some, the government can deny permission to dismiss the workers.

The purpose of notice may determine what government agency is to be notified. For example, if negotiation or review of the employer's decision is authorized, notice is sometimes given to an industrial court or arbitration body. If the aim of the notice is to help provide services to workers, the agency receiving notice is likely to be an employment office or a labor ministry.

Canada is an example of how advance notice can be combined with rapid provision of services to workers affected by plant closings or mass layoffs. Seven of the twelve Canadian Provinces and territories have notice requirements; certain classes of workers are also covered by national law. About three-quarters of Canada's work force is covered by advance notice requirements.

When government agencies receive notice of a closing or mass layoff, a small Federal agency, the Industrial Adjustment Service (IAS), immediately steps in with an offer to help the workers find new jobs. Providing technical and modest financial assistance, the IAS helps to establish labor-management adjustment committees that work to place workers in new jobs as quickly as possible. The committee is headed by an independent chairman, selected from a list of experienced people. IAS services are available throughout Canada, and usually begin well in advance of the layoffs or closings. In Provinces that do not require notice, employers may volunteer information about impending layoffs or closings, or IAS may learn of them through news accounts or word of mouth.

When Is Notice of Collective Dismissals Required?

The circumstances that trigger notice vary considerably. The laws in Western Europe often take into account the number of workers to be dismissed, the size of the firm, and the time period over which the dismissals are to occur. For example, in Denmark, the collective notice requirements are triggered when enterprises employing 20 to 99 workers plan to dismiss 10 or more wage earners in a 30-day period. Enterprises employing 100 to 299 workers must provide notice when 10 percent or more of the work force would be dismissed over the 30-day period; those firms that employ 300 or more workers must provide notice when at least 30 dismissals are called for.

This approach is one of two options given to EC members to comply with the European Council's 1975 directive on collective redundancies. The other option would require notice when at least 20 workers would be dismissed over a period of 90 days, regardless of the number of people normally employed in the establishment.

Length of notice varies, as well. In Canada, the federal notice provisions (which apply only to a small proportion of the Canadian work force) require that employers notify the Minister of Labour 16 weeks before dismissing 50 or more employees who have worked 3 consecutive months or more. Six of the seven laws—those of Manitoba, Newfoundland, Nova Scotia, Ontario, Quebec, and the Yukon—require at least 8 weeks' notice when 50 workers are to be dismissed, and 16 weeks when dismissals will affect 500 or more workers. Some are more stringent; Nova Scotia and Quebec, for example, require 8 weeks' notice when as few as 10 workers are dismissed, and the Yukon requires 4 weeks' notice when 25 to 49 workers would be dismissed. New Brunswick's law, passed in 1982 but not fully proclaimed in effect until December 1985, applies only to group dismissals of workers covered by collective agreements. It requires employers to provide 4 weeks' notice before dismissing 25 or more such workers if they comprise at least 25 percent of the work force.

Several Provinces (Manitoba, New Brunswick, Nova Scotia and Ontario) allow employers to use payment in lieu of notice in group dismissals. Some Provinces also require the employer to keep benefits in effect during this period. (These options and requirements should not be confused with mandatory severance payments, which employers have to pay certain workers when making group dismissals in Ontario and under the federal code.)

Among EC members, employers generally consult with an employees' representative before officially notifying a government agency. Sometimes, the period of formal notice to the government may be quite brief. The 1975 directive of the EC (which most members have complied with) requires only 30 days' formal notice to a government agency before dismissals can begin.[108] However, this notice is preceded by open-ended consultation with the workers' representatives, and does not obviate any provisions governing individual rights in dismissals.[109] The EC directive also suggests that member countries empower the government agency to extend the notice period so that the agency can "seek solutions in the problems raised by the projected redundancies."[110]

In Sweden, which is not an EC member, the district labor board must be given 2 months' notice when 5 to 25 workers are to be dismissed; 4 months' notice when 25 to 100 workers are involved, and 6 months' notice when more than 100 workers are to be dismissed. The union must be notified at least 1 month before the dismissals; however, since employers must give the union an opportunity to negotiate, notice to the workers is often the first step in the process.

Consultation and Information Requirements

In countries that require notice but not consultation, the employer may have to provide a written statement of intent to dismiss a certain number of workers at a certain time, but beyond that has few obligations to offer information about the dismissals. Where the law requires consultation, the employer may have to provide much more information.

Under the EC directive, for example, an employer planning collective dismissals is to consult with the workers' representative "with a view to reaching an agreement." At the very least, the consultations are to address "ways and means" to avoid the dismissals or reduce the number of workers affected by them, and ameliorate the consequences of the dismissals. The employer must supply "all relevant information," and give a written account of the reasons for the proposed dismissals, the number of workers to be dismissed, the number of workers ordinarily employed at the establishment, and the time period for the dismissals. The same information must be provided to the relevant government agency, together with information about the results of the consultation with the workers' representatives.

Some EC countries require more information than the minimum specified in the directive. In England, for example, the employer must disclose to the union the methods proposed for selecting employees to be dismissed, and for carrying out the dismissals.[111] In France, the information provided to the government must include (among other things) the economic, technical, or financial reasons for the dismissals, and the efforts made to reduce the number of dismissals and encourage the reemployment of the workers.[112]

Many Western European countries also require companies to give works councils—and, in some cases, government agencies—substantial information about future plans that might affect employment. For example, in West Germany, an employer must disclose to the works council any proposed plans for changes in the organization that could lead to redundancies or otherwise disadvantage the work force. Also, West German employers must notify the regional employment agency of foreseeable changes over the next year that might lead to the dismissal of workers or downgrading of personnel. The opinion of the works council on the change is appended to the notice. The purpose of the notice, according to one source, is to facilitate "long-range observation of labour market developments and to permit all parties concerned to take preparatory steps that would smooth the transition to new employment."[113]

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[108] Countries can grant the government authority the power to reduce or extend the notice period.

[109] Technically, the directive does not state that consultation with workers must begin before notification of the public authority. However, the notification is to contain, among other things, all relevant information about consultations with workers' representatives. This indicates that the consultation process must precede notice.

[110] "Council Directive of 17 February, 1975," op cit., Section 3, article 4.

[111] *Halsbury's Statutes of England*, vol. 45, Continuation Volume 1975 (London: Butterworths, 1976), p. 2412.

[112] Jean Pélissier, "France," *Workforce Reductions in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industrialised Market Economy Countries*, op. cit., p. 63.

Consultation is not generally required in Canada; however, in some jurisdictions, employers may be required to participate in developing an adjustment program after formally notifying a government agency of planned dismissals. This is mandatory for employers who fall under the jurisdiction of the federal labor code. Upon giving notice to the government, these employers must establish joint planning committees, comprised of representatives of management and labor. The committees have the task of developing an adjustment program to eliminate the need for dismissals or to minimize their impact on workers and help the workers find new jobs. In some Provinces (Manitoba, Ontario, and Quebec), the Provincial labor minister, upon being given notice, can require employers to cooperate in adjustment programs.

Government Review of the Decision To Dismiss Workers

Several countries require employers to seek government authorization for collective (and in some cases individual) dismissals. The ILO survey identified 15 countries as having explicit requirements for government authorization of work force reductions (Algeria, Chile, Colombia, France, India, Iraq, The Netherlands, Panama, Portugal, Peru, Senegal, Sri Lanka, Spain, the Sudan, and Zaire). In several other countries (the Congo, Indonesia, Venezuela, and Mexico), prior authorization from a disputes board or arbitration body is needed.

As the list suggests, requirements for government consent are more common among developing countries than among highly industrialized countries.[114] However, in France, employers must consult with an employee representative before giving notice of a planned dismissal to the Labour Director of the department. After getting the notice, the Director has 30 days to review the case (7 days when fewer than 10 dismissals are involved). If the Director does not deny the request, the dismissals can proceed. Appeals, by either the employees or the employer, can be taken to the Ministry of Labour or an administrative tribunal.

International Organizations: Agreements, Standards, and Guidelines

European Community (EC)

Several provisions from the February 1975 directive of the Council of the European Community on advance notice and consultation on collective dismissals have been discussed in the relevant sections above. To sum up, the EC directive pertains to collective dismissals for reasons not related to the individual worker concerned. It gives two options for determining the number of dismissals that trigger notice and consultation requirements. It specifies a procedure by which employers are to consult with workers' representatives when considering collective dismissals. It also specifies that employers are to provide at least 30 days' notice to a public authority before undertaking collective dismissals. As of May 1986, 10 of the 12 member states of the EC have enacted or revised laws to comply with the directive.

International Labour Organisation (ILO)

The ILO is a special agency of the United Nations. In June 1982, delegates to the ILO adopted a convention concerning termination of employment at the initiative of the employer. The convention contains supplementary provisions on consultation with workers' representatives and notification of the competent public authority in the event of termination of employment for economic, technological, structural or similar reasons.[115]

The ILO delegates also adopted a recommendation that, among other things, urged: 1) employer consultation with workers' representatives on major changes in undertakaings; 2) consideration of measures to avert or minimize dismissals (measures such as internal transfers, training and retraining, restrictions on overtime and reduction of normal work hours); 3) establishment of criteria for termination of employment; 4) provision of a certain priority of rehiring to the dismissed workers; and 5) adoption of measures by a competent authority to place workers as soon as possible in alternative employment, with training or retraining where appropriate.[116]

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[113] Werner Sengenberger, "Federal Republic of Germany," *Workforce Reductions in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industralised Market Economy Countries*, op. cit., pp. 91-92.

[114] Edward Yemin (ed.), "Comparative Survey," *Workforce Reductions in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industralised Market Economy Countries*, op. cit., pp. 12-13.

[115] International Labour Conference Convention 158, "Convention Concerning Termination of Employment at the Initiative of the Employer," adopted June 22, 1982.

Organisation for Economic Cooperation and Development (OECD)

In 1976, OECD issued voluntary guidelines for multinational enterprises operating in the territories of member countries. A voluntary guideline on advance notice was included. It recommends that enterprises,

> . . . within the framework of law regulations and prevailing labour relations and employment practices, in each of the countries in which they operate, should: in considering changes in their operations which would have major effects upon their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and where appropriate to the relevant government authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects.[117]

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[116] International Labour Conference Recommendation 166, "Recommendation Concerning Termination of Employment at the Initiative of the Employer," adopted June 22, 1982.

[117] *The OECD Guidelines for Multinational Enterprises* (Paris: Organisation for Economic Co-operation and Development, 1986), pp. 15-16.

APPENDIX B: STATE AND LOCAL ADVANCE NOTICE PROGRAMS

Advance notice legislation has been proposed in more than 20 States over the years. Three States and a few local governments require advance notice in certain circumstances, and a few other State legislatures have enacted voluntary notice laws of one form or another. Besides notice provisions, several State legislatures have authorized other kinds of programs related to plant closings: some States require continuation of health insurance coverage for workers after layoffs or closings; although this is usually offered at the employees' expense, one State requires the employer to pay for the continued coverage. Several States offer technical and financial assistance to aid employees in buying plants that are closing. Some States also provide assistance to troubled firms to help them stay in business, and thus avoid shutting down or laying off people. Finally, a number of State legislatures have authorized special studies or commissions on plant closing issues.

The current status of State advance notice laws and two well-known examples of local ordinances are discussed briefly below.

Maine

Since the early 1970s, a Maine law has required employers to provide advance notice, as well as severance pay, when certain plants are closed or relocated.[118] The notice and severance pay requirements apply only to "covered establishments," defined as "any industrial or commercial facility or part thereof which employs or has employed 100 or more people in the last 12 months."

Any person proposing to close or relocate a covered establishment is to provide notice 60 days before the relocation to the Director of the State Bureau of Labor. A firm that intends to move operations outside of Maine must also provide 60 days' notice to the employees and the municipality. Failure to do so could result in a judgment of $500 against the firm; penalties are not specified for failure to notify the State. The law exempts firms from any fine if the relocation is required due to a natural calamity or if unforeseen circumstances prevented the firm from providing notice.

The requirement for mandatory severance pay also applies only to establishments that employed 100 or more workers in the prior 12 months. When closing or relocating such establishments, firms are to pay the equivalent of 1 week's wage for each year an employee has worked at the establishment. Severance pay is not required for employees who have worked less than 3 years at the firm; nor is it required when the firm relocates the facility within 100 miles of the current site, or when the employee accepts a job offered at the new location. Also, companies are not liable for severance pay when the closing or relocation is due to a "physical calamity"—defined to include adjudicated bankruptcy as well as fires, floods, or other natural disasters. Finally, an employer does not have to adhere to the State severance pay requirements when it has an "express contract" with the employees providing for severance pay.

In enforcing the severance pay provisions, the State can examine the books and records of the employer. It can supervise the payment of unpaid severance, and it can bring court action to recover the unpaid amounts. Most companies apparently have complied with the severance pay requirements;[119] however, several enforcement actions have been taken. Three companies have challenged the law on constitutional grounds, or on grounds that it preempts the Federal Employee Retirement Income Security Act (ERISA) and the National Labor Relations Act. In June 1986, Maine's Supreme Judicial Court upheld the State statute in one of these cases.[120]

The law does not explicitly provide the State government with the power to enforce the 60-day notice provision. Aside from a possible judgment of $500 for failing to provide notice to a municipality or the employees when moving an establishment outside the State, no other penalties are specified in the law. The State does not maintain separate statistics on compliance with the notice requirements of the law. However, some compliance information can be obtained from the State's Bureau of Labor Standards' recordkeeping on severance pay. In the 1982-85 period, according to the Bureau, 23 plant closings or relocations in Maine were large enough to be subject to the severance pay requirements of the law. Of these, 13 firms (or about 56 percent) provided at least 60 days' notice. Ten provided less notice than the law required, or no notice.[121]

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[118] 26 Maine Revised Statutes Annotated 625-B. The Maine law on notice of plant closings was initially passed in 1971; it was amended in 1973, 1975, and 1981. Initially, companies were required to provide severance pay only when they failed to provide notice. However, this was changed in 1973; severance pay is now required whether or not notice is provided.

[119] According to Paul Lovejoy, the Deputy Director of the Bureau of Labor Standards, companies paid a total of $4,576,945 to 3,580 workers from the beginning of the program in 1971 through 1985. Most of these payments ($4,289,943 in severance to 3,380 dismissed workers) occurred between 1980 and 1985. Another 580 workers could receive a total of up to $1,746,499 if pending court cases are decided in their favor.

[120] "Court: Severance Pay Must be Granted," *Kennebec Journal*, June 3, 1986.

Wisconsin

Wisconsin requires firms employing 100 or more people in the State to provide 60 days' advance notice before mergers, liquidations, dispositions, or relocations that would result in a cessation of business operations affecting 10 or more employees. Firms that fail to provide this notice or that do not provide certain other information required by the law can be fined up to $50 for each employee affected by the cessation of business operations. Notice is to be given to several parties: the State Department of Industry, Labor and Human Resources, and, due to an amendment to the law in 1984, to any affected employee, the union (if any), the municipality, and county governments.

One purpose of the notice law is to assure that companies provide all wages and benefits due to employees when closing down or relocating. In fact, the Wisconsin law was enacted in 1976, shortly after a company failed to provide final wages due to employees after shutting down its operations without notice and moving out of the State.

Besides giving notice, firms also are to provide information that may be required by the Industry, Labor and Human Relations Department about their payrolls, and the wages and other renumeration owed to affected employees. The Department also can require the employer to provide a plan for making final payments to employees when ceasing operations. The law establishes a procedure for dealing with disagreements between employers and employees about wage claims, and the State is authorized to investigate and attempt to adjust controversies about wage claims. The State can sue the employer on behalf of the employee when it deems that a wage claim is valid, and can take a lien on the employer's property within the State.

The notice law is also intended to give the State the opportunity to prepare an economic adjustment program. Under the law, the Department of Industry, Labor and Human Resources must promptly inform two other State agencies (the Department of Development and the Council for Economic Adjustment) when it receives notice of an impending cessation of business activities. The eight-member Council on Economic Adjustment, comprised of key State officials for economic development, labor, employment and training, and vocational, technical, and adult education, advises the Department of Development in carrying out its activities.

As noted, the penalty for not complying with the notice requirement is minimal—$50 per employee. Legislation to increase the penalty to $50 per employee for each day that notice is not provided (or $3,000 per employee if a company failed to provide any notice at all) was considered in the 1985-86 session of the legislature, but was not acted on before the session ended.

Since March 1984, when notice to employees and local governments was first required, the State has investigated several complaints that employers did not provide the requisite notice; as of July 1986, enforcement action had been recommended in three cases.

From 1976 through 1985, about 250 companies provided notice of partial or total closings in Wisconsin, but no hard figures are available on the degree of compliance with the law. Estimates prepared for the 1976-83 period (before employee and community notice was required) were that between 25 and 33 percent of the firms in Wisconsin complied with the notice requirements of the law.

Massachusetts

The Commonwealth of Massachusetts adopted a corporate standard for notice as part of a package of programs dealing with mature industries that passed the State legislature in July 1984. The notice provision is part of a "social compact," in which employers who receive financial assistance from certain quasi-public State agencies must "agree to accept" certain "voluntary standards of corporate behavior." Specifically, the companies must agree to make "a good faith effort" to provide employees with the "maximum practicable combination" of advance notice and maintenance of income and health insurance benefits. The law, while stating that no minimum standard is prescribed, nonetheless specifies that the State "expects" firms to provide "at least 90 days' notice or equivalent benefits." The law also calls on companies to help reemploy the workers.

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[121] Of the firms that did not provide notice, one went bankrupt and presumably would not be required to provide notice; three are involved in legal proceedings about the law.

Companies are required to accept the voluntary standard only if they receive financial assistance from one of five "quasi-public" State agencies (the Massachusetts Industrial Finance Agency, the Community Development Finance Corp., the Massachusetts Technology Development Corp., the Government Land Bank, and the Massachusetts Product Development Corp.). These agencies provide assistance (such as industrial revenue bonds and loan guarantees) to aid new and established businesses in the State. The specific form of the agreement is to be devised by the individual agency. Typically, before getting financing, the company must sign an agreement that it will give employees advance notice of layoffs or closings, provide severance pay, and maintain health insurance benefits where possible.

The voluntary standard for corporate behavior is part of a comprehensive package of technical and financial assistance for troubled industries and adjustment assistance for displaced workers. Other components of the Massachusetts program include:

- Consulting and financial services for troubled firms.
- Reemployment assistance programs: this program provides reemployment services (such as counseling, placement and training) to workers affected by plant closings or partial closings. Services can be provided at the plant site or at other locations.
- Reemployment assistance benefits: workers who do not receive advance notice or severance pay from employers may receive supplemental unemployment insurance benefits under some circumstances. The maximum duration of the benefits is 13 weeks, reduced by the number of weeks of advance notice and severance pay given by the employer. The maximum amount of benefits per week is $97. Workers receiving this benefit must participate in a reemployment assistance program, if one is available.
- Health insurance: the law requires that new or renewed group health insurance policies provide for 90 days of continued coverage after a plant closing or partial closing. The employer and the displaced worker are to continue to pay their shares of the premium for the 90-day period. In addition, the State has established a health insurance benefit fund to help eligible displaced workers purchase health insurance. These funds are available only to workers who are eligible for reemployment assistance benefits, and then only if they lost group insurance plans due to the bankruptcy of their employer, or if they were insured under an individual (not a company policy) when they lost their job.

The concept of a social compact to deal with the issues of worker dislocation had its genesis in the Governor's Commission on the Future of Mature Industries in Massachusetts. In its final report, issued in June 1984, the Commission urged *all* Massachusetts businesses (not just the ones receiving State financial assistance) to adopt the standards of corporate behavior that were subsequently stated in the law. Although these standards would be voluntary, the Commission noted: "... they constitute a good-faith pledge of actual behavior by the companies that adopt this compact."[122]

The State, labor organizations, and a number of business groups are promoting adoption of the voluntary social compact. The Massachusetts High Technology Council issued a statement of guiding principles for work force reductions, calling for the earliest practical notice to employees, local government, and the State.[123] The Associated Industries of Masssachusetts recommended that its 2,700 member companies members "adopt the voluntary guidelines as a matter of corporate policy" if they have not already done so.[124] About 40 local chambers of commerce also have endorsed the social compact concept.

Maryland

In May 1985, the Maryland legislature passed a law establishing a quick response program to help both employees and employers in mitigating the effects of reductions in business operations. The law calls on the State Secretary of Employment and Training to develop, in cooperation with the Governor's Employment and Training Council, voluntary guidelines for employers who are reducing operations. The guidelines must cover three topics:

1. appropriate length of notice. The law states that "whenever possible and appropriate, at least 90 days' notice shall be given." Compliance with the guideline is voluntary;
2. appropriate continuation of benefits, including health, severance and pension benefits, when operations are reduced; and

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[122] The Governor's Commission on the Future of Mature Industries, *Final Report*, June 1984, p. 64.

[123] Massachusetts High Technology Council, Inc., "Guiding Principles Defining Appropriate Responsible Action for Any Work Force Reduction," mimeo, n.d.

[124] "AIM Urges Corporate Adoption," *Legislative Bulletin*, vol. 26, No. 9, May 22, 1986.

3. specific mechanisms employers can use to ask for assistance under the quick response program.

In June 1986, the Secretary of Employment and Training sent a letter and a copy of the voluntary guidelines to 95,000 Maryland employers.

Besides the voluntary guidelines, the Maryland quick response program includes onsite registration for unemployment insurance when 25 or more workers are laid off at one time, provision of labor market and retraining information, job placement services, and job search workshops.

Michigan

In 1979, the Michigan legislature adopted a voluntary notice provision. It calls on the State labor department to *encourage* business establishments considering closing or relocating to give notice "as early as possible" to the department, the employees, the employee representatives, and the community in which the facility is located. The voluntary notice provision is part of an act to encourage the formation of employee-owned corporations. Technically, the 1979 law lapsed in July 1984; the State legislature reauthorized and expanded the employee ownership law in a package of legislation passed at the end of 1985.[125]

Very few employers have officially notified the State labor department of plant closings or relocations in the 7 years since the voluntary notice provision was adopted. One State official familiar with the program since its inception recalled that only one firm had formally notified the Department of Labor by letter of an impending closing. This is perhaps not surprising since the notice program is entirely voluntary and little effort has been made to publicize it.

Connecticut

Connecticut does not have a notice requirement. However, it does require certain employers to continue to pay for health insurance benefits for employees affected by plant closings or relocations at establishments that employed 100 or more people at any time in the 12 months before the closing or relocation. Originally, employers were required to pay for the continuation of benefits for a 90-day period; in 1985, the legislature extended the period to 120 days. The requirement to pay ends when a worker becomes eligible for other group coverage. After the employer-provided coverage ends, the workers are entitled to 39 additional weeks of continued coverage at their own expense. The requirements of the law can be superseded when a collective bargaining agreement requires employers to pay for continued health benefits after closings or relocations.

Philadelphia

The city council of Philadelphia, in June 1982, adopted an ordinance requiring firms to provide 60 days' notice when closing down or relocating to a site outside of Philadelphia that is not within reasonable commuting distance.[126] The notice requirements cover closings and relocations of facilities at which at least 50 people were employed in the prior 12 months.

Notice is to be given to the Director of the Philadelphia Commerce Department, the employees, and any union or employee organization that represents the employees. Enforcement of the ordinance is through courts of "appropriate" jurisdiction. Firms that do not provide written notice as required by law can be enjoined by a court from carrying out the closing or relocation until notice is given. If the firm has already carried out the closing or relocation, the court can award damages of up to 60 days' wages to each employee, depending on the number of days of notice that was not provided.

A key purpose of the ordinance is to try to find alternatives to the closure or departure of the firm. After notice is given, the city Commerce Department will explore the options with the employer. If the firm plans to relocate, the Department will investigate the possibility of finding another site within the city. For firms that plan to shut down, the city will investigate the possibility of a worker buyout, and also will help the firm find alternative financing or find buyers for the company. Depending on the circumstances, the city may be able to provide various kinds of economic development assistance, retraining assistance, and tax incentives to firms that stay.

From the fall of 1982 until the end of April 1986, about 65 firms provided letters of notification to the city. About 45 firms specified the number of employees affected; 4,268 full-time employees were involved. Fifty-two firms gave a reason for either closing or relocating; of these, 20 planned to relocate to an existing or proposed establishment outside of Philadelphia; 18 gave economic or financial reasons for closing or relocating; and others cited reasons such as termination of a lease or getting out of a line of business.

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[125] Public Law 152, laws of 1985.

[126] Bill No. 1118, amending Title 9 of the Philadelphia Code, was passed on June 17, 1982, and took effect 120 days later. The ordinance was initially disapproved by the Mayor; however, the council repassed the ordinance, and it went into effect without the Mayor's approval.

Vacaville, California

In 1984, the city council of Vacaville adopted an ordinance that requires companies that get certain kinds of local development assistance from the city to provide advance notice if they later close down a facility. The notice requirement applies to California employers who relocate to a special redevelopment area in Vacaville, and who receive at least $1,000 of local financial aid (other than governmental or tax exempt financing for public improvements). Such companies "must provide at least three months advance notice or sooner if known or reasonably foreseeable, of plans to reduce, relocate or cease operations which will effect 35 or more jobs of the company's full time permanent staff at the Vacaville location." These companies must "make reasonable efforts" to provide 1 year's advance notice. Upon applying for financial aid, the company must agree in writing to abide by the terms of the notice requirement. The ordinance will expire on January 1, 1987, unless extended by the council; however, companies receiving assistance while the ordinance is in effect will continue to be bound to its terms.

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Office of Technology Assessment

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The Technology Assessment Board is composed of six members of the House, six members of the Senate, and the OTA Director, who is a non-voting member.

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